

AN ORDINANCE ESTABLISHING THE BOUNDARIES OF THE DISTRICTS OF THE CITY WITH REGULATIONS AND RESTRICTIONS TO BE ENFORCED AND TO BE KNOWN AS THE ZONING ORDINANCE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GARDNER AS FOLLOWS:

<b>SECTION 1</b>	<b>GENERAL PROVISIONS.....</b>	<b>1</b>
110	PURPOSE .....	1
120	AUTHORITY .....	1
130	SCOPE .....	1
140	APPLICABILITY .....	1
150	AMENDMENTS.....	1
160	SEPARABILITY.....	1
<b>SECTION 2</b>	<b>DEFINITIONS.....</b>	<b>2</b>
<b>SECTION 3</b>	<b>USE DISTRICTS.....</b>	<b>10</b>
310	TYPES OF DISTRICTS .....	10
320	LOCATION OF DISTRICTS.....	10
<b>SECTION 4</b>	<b>USE REGULATIONS.....</b>	<b>11</b>
410	PERMITTED USES IN RESIDENTIAL, COMMERCIAL AND INDUSTRIAL DISTRICTS .....	11
415	TABLE OF USES .....	12
420	NONCONFORMING USES AND STRUCTURES .....	16
425	ABANDONMENT OR NON-USE .....	18
<b>SECTION 5</b>	<b>OVERLAY DISTRICTS AND PLANNED UNIT DEVELOPMENTS (PUDS).....</b>	<b>19</b>
510	FLOOD PLAIN OVERLAY DISTRICT .....	19
520	WATER SUPPLY PROTECTION OVERLAY DISTRICT .....	23
530	DEVELOPMENT OVERLAY DISTRICT 1.....	31
540	SMART GROWTH PLANNED UNIT DEVELOPMENT (SGPUD).....	33
550	INDUSTRIAL & COMMERCIAL HERITAGE PLANNED UNIT DEVELOPMENT (ICHPUD) .....	35
<b>SECTION 6</b>	<b>DENSITY AND DIMENSIONAL REGULATIONS .....</b>	<b>37</b>
610	GENERAL REQUIREMENTS .....	37
620	TABLE OF LOT, AREA, FRONTAGE, YARD, AND HEIGHT REQUIREMENTS .....	38
630	INFILL DEVELOPMENT .....	39
<b>SECTION 7</b>	<b>OFF-STREET PARKING &amp; LOADING STANDARDS.....</b>	<b>40</b>
710	DEFINITIONS .....	40
720	GENERAL PROVISIONS .....	40
730	UNDETERMINED USES.....	41
740	RELIEF FROM PARKING REGULATIONS.....	41
750	SCHEDULE OF PARKING USES-GENERAL REQUIREMENTS.....	41
760	STANDARD DIMENSIONAL REGULATIONS .....	42
770	DESIGN REQUIREMENTS FOR PARKING LOTS AND FACILITIES .....	43
<b>SECTION 8</b>	<b>SPECIAL RESIDENTIAL REGULATIONS .....</b>	<b>46</b>
810	OPEN SPACE RESIDENTIAL DEVELOPMENT (OSRD).....	46
820	IN-LAW APARTMENTS .....	51
830	HOME OCCUPATIONS .....	52
<b>SECTION 9</b>	<b>SIGNS AND ADVERTISING DEVICES.....</b>	<b>54</b>
<b>SECTION 10</b>	<b>SUPPLEMENTAL REGULATIONS.....</b>	<b>59</b>
1000	SCHEDULE DEVELOPMENT.....	59

1010	SITE PLAN REVIEW .....	60
1020	ADULT USES .....	70
1030	WIRELESS COMMUNICATIONS FACILITIES .....	73
1040	WIND ENERGY CONVERSION SYSTEMS .....	79
1050	FENCES AND HEDGEROW .....	80
1060	EARTH MOVING AND ALTERATION .....	80
<b>SECTION 11 ADMINISTRATION.....</b>		<b>86</b>
1110	ENFORCEMENT.....	86
1120	REPETITIVE PETITIONS .....	86
1130	BUILDING OR USE PERMITS.....	86
1140	PENALTY.....	86
1150	ZONING BOARD OF APPEALS.....	86
1160	AMENDMENT .....	87
1170	VALIDITY .....	87
1180	SPECIAL PERMITS.....	87

## **110      PURPOSE**

These regulations are enacted to promote the general welfare of the City of Gardner, to protect the health and safety of its inhabitants, to encourage the most appropriate use of land throughout the City, to preserve the cultural, historical and agricultural heritage of the community, to increase the amenities of the City and to reduce the hazard from fire by regulating the location and use of buildings and the area of open space around them, all as authorized by, but not limited to, the provisions of the Zoning Act, M.G.L. c. 40A, as amended, Section 2A of 1975 Mass. Acts 808, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

## **120      AUTHORITY**

This Zoning Ordinance is enacted in accordance with the provisions of the Mass General Laws, Chapter 40A, and any and all amendments thereto and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

## **130      SCOPE**

For these purposes, the construction, repair, alteration, reconstruction, height, number of stories, and size of buildings and structures, the size and width of lots, the percentage of lot area that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land in the City are regulated hereinafter provided.

## **140      APPLICABILITY**

All buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and the use of all premises in the City, shall be in conformity with the provisions of the Zoning Ordinance. No building, structure or land shall be used for any purpose or in any manner other than is expressly permitted within the district in which such building, structure or land is located. Where the application of this Ordinance imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this Ordinance shall control.

## **150      AMENDMENTS**

This Ordinance may from time to time be changed by amendment, addition, or repeal by the City Council in the manner provided in M.G.L. c. 40A, s.5, and any amendments thereto.

## **160      SEPARABILITY**

The invalidity of any section or provision of this Ordinance shall not invalidate any other section or provision herein.

## SECTION 2 DEFINITIONS

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In this Ordinance, the following terms and constructions shall apply unless a contrary meaning is required by the context or is specifically prescribed in the text of the Ordinance. Words used in the present tense include the future. The singular includes the plural and the plural includes the singular. The word "shall" is mandatory and "may" is permissive or discretionary. The word "and" includes "or" unless the contrary is evident from the text. The word "includes" or "including" shall not limit a term to specified examples, but is intended to extend its meaning to all other instances, circumstances, or items of like character or kind. The word "lot" includes "plot"; the word "used" or "occupied" shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied". The words "building," "structure," "lot," or "parcel," shall be construed as being followed by the words "or any portion thereof." The word "person" includes a firm, association, organization, partnership, company, or corporation, as well as an individual. Terms and words not defined herein but defined in the Commonwealth of Massachusetts state building code shall have the meaning given therein unless a contrary intention is clearly evident in this Ordinance.

Defined terms throughout the Ordinance are denoted by a bold font.

**Accessory building:** A subordinate building located on the same lot as the main, or principal building or principal use, the use of which is customarily incidental to that of the principal building or use of the land.

**Accessory use:** A use customarily incidental to that of the main or principal building or use of the land.

**Adult Social Day Care Services:** Individualized programs of social activity provided to adult clients who require daytime supervision at sites other than their homes. Activities include: assistance with walking, grooming and eating; provision of one meal and two snacks per day; planned recreational and social activities suited to the needs of the participants and designed to encourage physical and mental exercise and stimulate social interaction.

**Adult uses:** Shall be defined in Section 1020 of this Ordinance.

**Agricultural use, exempt:** Agricultural use of property which is on a parcel of over 5 acres and which is exempted by M.G.L. c. 40A, s. 3.

**Agricultural use, nonexempt:** Agricultural use of property which is on a parcel of 5 acres or less which is not exempted by M.G.L. c. 40A, s. 3.

**Alterations:** As applied to a building or structure, a change or rearrangement in the structural parts or in the exit facilities, or an enlargement whether by extending a side or by increasing in height, or the moving from one (1) location or position to another.

**Animal clinic or veterinary hospital:** A place where animals or pets are given medical or surgical treatment and the boarding of animals is limited to short term care incidental to the clinic or hospital use.

**Antenna:** Any exterior apparatus designed for telephonic, radio, television, personal communications services (PCS), pager network, or any electromagnetic waves of any bandwidth. An antenna can either be attached to a tower or attached to a building.

**Assisted Living Facility:** profit or non-profit entity which provides room and board and where the operator provides a minimum of two meals per day and assistance with activities of daily living for three or more elderly or disabled residents 651 CMR 12.02

Bed and Breakfast establishment: Accommodations with not more than six (6) bedrooms occupied by Bed and Breakfast guests in which the owner of the establishment resides. Bed and Breakfasts are intended for guests on intermittent visits, and shall not be used as long-term rental units or apartments. All parking for residents and guests shall be off-street.

Building: A structure enclosed within exterior walls or firewalls, built, erected, and framed of a combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals, or property. For the purposes of this definition, "roof" shall include an awning or any similar covering, whether or not permanent in nature.

Building coverage: That percentage of the lot area covered by the roof area of a building or buildings.

Building height: The vertical dimension measured from the average elevation of the finished lot grade at the front of the building at all points surrounding the building to the highest point of ceiling of the top story in the case of a flat roof, to the deck of a mansard roof and to the average height between the plate and ridge of a gable, hip or gambrel roof. Not included are spires, cupolas, antennae, or similar parts of structures which do not enclose potentially habitable floor space.

Building, principal: A building in which is conducted the main or principal use of the lot on which said building is situated.

Business or professional office: A building or part thereof, for the transaction of business or the provision of services exclusive of the receipt, sale, storage, or processing of merchandise. See office building for related definition.

Child care facility: A day care center or school age child care program, as those terms are defined in M.G.L. c. 28A, s. 9.

Club or lodge, private: Buildings, structures and premises used by a nonprofit social or civic organization, or by an organization catering exclusively to members and their guests for social, civic, recreational, or athletic purposes which are not conducted primarily for gain and provided there are no vending stands, merchandising, or commercial activities except as may be required generally for the membership and purposes of such organization.

Commercial recreation, indoor: A structure for recreational, social or amusement purposes, which may include as an accessory use, the consumption of food and drink, including all connected rooms or space with a common means of egress and entrance. Places of assembly shall include theatres, concert halls, dance halls, skating rinks, bowling alleys, health clubs, dance studios, or other commercial recreational centers conducted for or not for profit.

Commercial recreation, outdoor: Drive-in theatre, driving range, bathing beach, sports club, horseback riding stable, boathouse, game preserve, marina or other commercial recreation carried on in whole or in part outdoors, except those activities more specifically designated in this Ordinance.

Convenience retail: A small retail establishment of less than 2,500 gross square feet, usually located within or associated with another use, that offers for sale convenience goods such as pre-packaged food, tobacco, periodicals, and other household items.

Contractor's yard: Premises used by a building contractor or subcontractor for storage of equipment and supplies, fabrication of subassemblies, and parking of wheeled equipment.

Dwelling: A building designed and occupied as the living quarters of one (1) or more families on one lot. Single- and two-family dwellings shall be designed for and occupied by not more than one (1) or two (2) families, respectively, on one lot. Three and four-family dwellings shall be designed for and occupied by not more than three (3) or four (4) families respectively, on one lot. A multifamily dwelling shall be one designed for and occupied by five (5) or more families on one lot.

Dwelling unit: One or more rooms providing complete living facilities for one family including equipment for cooking or provisions for the same, and including room or rooms for bathrooms, living, sleeping, and eating.

Earth removal: Shall be defined as set forth in Section 1070 herein.

Educational use, Exempt: Use of land or structures for educational purpose exempt from regulation pursuant to M.G.L. c. 40A, s. 3. Those educational facilities which are located on land owned or leased by the Commonwealth, or any of its agencies or subdivisions or body politic, or by a religious sect of denomination, or by a nonprofit educational corporation.

Educational use, nonexempt: Educational facilities not exempted from regulation by M.G.L. c. 40A, s. 3.

Essential services: Services provided by a public service corporation or by governmental agencies through erection, construction, alteration, or maintenance of gas, electrical, steam, or water transmission or distribution systems and collection, communication, supply, or disposal systems whether underground or overhead, but not including wireless communications facilities. Facilities necessary for the provision of essential services include poles, wires, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment in connection therewith.

Family: Any number of individuals living and cooking together as a single housekeeping unit and including necessary domestic help such as nurses or servants.

Family day care home, small: Any private residence operating a facility as defined in M.G.L. c. 28A, s9. , as amended. Any private residence which, on a regular basis, receives for temporary custody and care during part or all of the day, children under seven years of age or children under sixteen years of age if such children have special needs; provided, however, in either case, that the total number of children under sixteen in a family day care home shall not exceed six, including participating children living in the residence. Small Family day care home shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation therefore.

Family Day Care Home, large: Any private residence operating a facility as defined in M.G.L. c. 28A, s.9, as amended, which, on a regular basis, receives for temporary custody and care during part or all of the day, children under seven years of age or children under sixteen years of age if such children have special needs, and receives for temporary custody and care for a limited number of hours, children of school age in accordance with regulations promulgated by the office; provided, however, that the number of children under the age of sixteen in a large family day care home shall not exceed ten, including participating children living in the residence. Large family day care home shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation therefore.

Farm stand, non-exempt: Facility for the sale of produce, wine and dairy products on property where the majority of such products sold during months of June, July, August and September, or the harvest season for that particular crop sold, are not produced or raised on the land of the owner or lessee during the aforementioned months or harvest every year or such parcel upon which the crops or products are produced does not exceed five acres are not exempt as more fully defined by M.G.L. c. 40A, s. 3.

Floor area, gross: The total square feet of floor space within the outside dimensions of a building including each floor level, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features.

Hazardous material: Any substance which is listed in, but not limited to, the EPA priority pollutants as described in section 307(a) of the Clean Water Act, as amended.

Home occupation: A vocation, trade, small business, craft, art or profession which can be conducted in entirety within the main (principal) or accessory building of a property by a bona fide resident of that main building and which, by nature of its limited size and scope, does not cause any outward manifestation (such as traffic generation, parking congestion, noise or air pollution, materials storage, and public service or utility demand) which is uncharacteristic of or an additional disturbance to the residential neighborhood in which said property is located. The following occupations are excluded if clients will be seen in the home, although other uses may be excluded on a case-by-case basis: Any clinic, veterinary hospital, restaurant, retail or wholesale supply shop or store, mortuary, medical doctor (MD, DO, DPM or equivalent), dentist (DDS, DMD or equivalent), chiropractor, lawyer, real estate or insurance agent. See Section 830 Home Occupations for additional regulations related to this use.

Junk: Any article or material or collection thereof which is worn out, cast off or discarded and which is ready for destruction or has been collected or stored for salvage or conversion. Any article or material which, unaltered or unchanged and without further reconditioning cannot be used for its original purpose as readily as when new shall be considered junk.

Junkyard or automobile graveyard: The use of any area or any lot, whether inside or outside of a building, for the storage, keeping, or abandonment of junk, scrap or discarded materials, or the dismantling, demolition, or abandonment of automobiles, other vehicles, machinery, or parts thereof.

Kennel, commercial: A commercial establishment in which four (4) or more dogs or domesticated animals are housed, groomed, bred, boarded, trained or sold.

Light manufacturing: Fabrication, assembly, processing, finishing work or packaging.

Live-work unit: A live-work unit may be used as both living accommodation, which has a kitchen and washroom, and a business operated by one or more people who live in the unit.

Lot: A continuous parcel of land with legally definable boundaries.

Lot area: The horizontal area of the lot exclusive of any area in a street or recorded way open to public use. At least eighty (80) percent of the lot area required for zoning compliance shall be land other than that under any water body, bog, swamp, wet meadow, marsh, or other wetland, as defined in, M.G.L. c.131, s.40 as amended.

Lot, corner: A lot with two (2) adjacent sides abutting upon streets.

Lot, depth of: The mean distance from the street line from which frontage is determined of the lot to its opposite rear line measured in the general direction of the side lines of the lot.

Lot, frontage of: The continuous portion of the line separating a lot from a street to which the owner of the lot has a legal right of access and to which the owner could provide for vehicular access from the principal building or a required parking space. When a lot is bounded by more than one street, both frontages and setbacks shall meet the minimum frontage and front yard setbacks. However, in the case of a lot bounded by two streets

forming an interior angle of more than 135 degrees, their combined frontage between lot lines may be used to satisfy the lot frontage requirement.

Lot, frontage street: A street to which the owner of a lot has a legal right of access and which provides the required lot frontage.

Lot, line: A line dividing one lot from another or from a street or any public place.

Lot width: Lot width shall be determined such that the center a circle having a minimum diameter of at least 80% of the required frontage of the lot can be passed along a continuous line from the front lot line along which the frontage of the lot is measured to any and all points of the principal structure on the lot without the circumference intersecting any side lot lines.

Manufactured home: a single family structure produced by companies on the Commonwealth's list of approved Manufactured Home Builders and certified by the Commonwealth of Massachusetts. Also: A dwelling unit that is factory-fabricated and transportable, designed to be permanently located on a permanent foundation. For the purpose of this Ordinance, a modular unit shall not be deemed a "mobile home" but shall be regarded as a conventional dwelling, subject to the rules and regulations contained herein.

Manufacturing: A use engaged in the basic processing and manufacturing of materials, or the manufacture from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products.

Mixed use: A single structure featuring non-residential on the first floor and one or more residential units on any other floor. In the case of mixed occupancy, the regulation for each use shall apply to the portion of the building or land so used.

Mobile home: A dwelling built upon a chassis, containing complete electrical, plumbing and sanitary facilities, and designed without necessity of a permanent foundation for year-round living, irrespective of whether actually attached to a foundation or otherwise permanently located.

Motel or Hotel: A building or buildings intended and designed for transient, overnight or extended occupancy, divided into separate units within the same building with or without a public dining facility. If such hotel or motel has independent cooking facilities, such unit shall not be occupied by any guest for more than four (4) continuous months, nor may the guest reoccupy any unit within thirty (30) days of a continuous four-month stay, nor may the guest stay more than six (6) months in any calendar year. No occupant of such hotel or motel may claim residency at such location.

Motor vehicle body repair: An establishment, garage or work area enclosed within a building where repairs are made or caused to be made to motor vehicle bodies, including fenders, bumpers and similar components of motor vehicle bodies, but does not include the storage of vehicles for the cannibalization of parts.

Motor vehicle general repairs: Premises for the servicing and repair of autos, but not to include fuel sales.

Motor vehicle light service: Premises for the supplying of fuel, oil, lubrication, washing, or minor repair services, but not to include body work, painting, or major repairs.

Municipal facilities: Facilities owned or operated by the city.

Nonconforming use: A use of a building, structure or lot that does not conform to the use regulations of this Ordinance for the district in which it is located; provided, that such use was in existence and lawful at the time the applicable provisions of this or prior Zoning Ordinances became effective.



**Nonconforming Structure:** Any structure which does not conform to dimensional regulations or to the parking and loading requirements of this Ordinance for the district in which it is located; provided that such structure was in existence and lawful at the time of the publication of the first notice of the public hearing before the City Council or Planning Board respecting the regulation to which it does not conform.

**Nursing or convalescent home:** Any building with sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire.

**Office building:** A principal building, not attached to any other building, designed and used for office use.

**Open space:** The parts of a lot designed and developed for pleasant appearance in trees, shrubs, ground cover and grass, including other landscaped elements, such as natural features of the site, walks and terraces. Such space shall not include rooftops or areas of a lot used for parking, access drives or other land-surfaced areas except walks, and terraces as noted above, designed and intended for non-vehicular use. Such hard-surfaced walks and terraces shall not exceed twenty-five (25) percent of the total required landscaped open space.

**Open Space Residential Development (OSRD):** A residential development in which the building and accessory uses are clustered together with reduced lot sizes, into one or more groups, in order to preserve open space and protect natural resources. The land not included in the building lots shall be permanently preserved as open space.

**Parking structure or Parking area:** A structure, building or lot or part of a lot which is accessory to a residential, commercial or industrial establishment and is primarily for the parking and storage of vehicles operated by the occupants, customers, visitors and employees of such an establishment or residence.

**Personal service establishment:** A facility providing personal services such as hair salon, barber shop, tanning beds, dry cleaning, print shop, photography studio, and the like.

**Planned Unit Development (PUD):** A mixed residential, business, and institutional development with extensive open space where the mixed uses are integrated with each other.

**Restaurant:** A building, or portion thereof, containing tables and/or booths for at least two-thirds (2/3) of its legal capacity, which is designed, intended and used for the indoor sales and consumption of food prepared on the premises, except that food may be consumed outdoors in landscaped terraces, designed for dining purposes, which are adjunct to the main indoor restaurant facility. The term "restaurant" shall not include "fast food restaurant."

**Restaurant, fast-food:** An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready to consume state for consumption either within the restaurant building or off premises and usually requires ordering food at a counter.

**Rooming house:** A house for which the principal use is the renting of room(s) to transient persons. This may include shared bathroom facilities.

**Setback, Front, Rear and Side:** The minimum distance required from the property line to the principal structure in the front, side and rear yards, respectfully.

**Sign:** Any device designed to inform or attract the attention of persons not on the premises on which the device is located. Any building surfaces other than windows which are internally illuminated or decorated with gaseous tube or other lights are considered "signs." The following, however, shall not be considered signs within the context of this Ordinance:

- (a) Flags and insignia of any government except when displayed in connection with commercial promotion.
- (b) Legal notices or informational devices erected or required by public agencies.
- (c) Temporary devices erected for a charitable or religious cause, provided they are removed within seven (7) days of erection.
- (d) Temporary displays inside windows, covering not more than thirty (30) percent of window area, illuminated by building illumination only.
- (e) Standard gasoline pumps bearing thereon in usual size and form the name, type, and price of gasoline.
- (f) Integral decorative or architectural features of a building, except letters, trademarks, moving parts, or parts internally illuminated or decorated with gaseous tube or other lights.
- (g) Devices identifying a building as distinct from one (1) or more of its occupants, such device being carved into or attached in such a way as to be an integral part of the building, not illuminated separate from building illumination, without color contrasting with sign background, and not exceeding four (4) square feet in area.
- (h) Address identification through numerals or letters not exceeding three (3) inches in height.

**Special Permit:** The permit process administered by the Special Permit Granting Authority as authorized by M.G.L. c.40A, s.9. An authorization given by the Special Permit Granting Authority to use property in accordance with the regulations of the Zoning Ordinance.

**Story:** The portion of a building which is between one floor level and the next higher floor level or the roof. If a mezzanine floor area exceeds one-third of the area of the floor immediately below, it shall be deemed to be a story. A basement shall be deemed to be a story when its ceiling is four (4) or more feet above the finished grade. A cellar shall not be deemed to be a story. An attic shall not be deemed a story if unfinished and without human occupancy.

**Street:** An accepted city way, or a way established by or maintained under county, state, or federal authority, or a way established by a subdivision plan approved in accordance with the subdivision control law built to specifications or construction guaranteed by adequate security, or a way determined by the planning board to have sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

**Street Center:** center line of a street.

**Street Line:** edge of right of way of a street.

**Street right-of-way:** The property in which a street is built. Also, the property held by the City adjoining the pavement and shoulders of a street.

**Structure:** A combination of materials assembled at a fixed location to give support or provide shelter or satisfy other purposes.

Temporary structure: A structure, without any foundation or footings, to be removed in accordance with the time set forth in the Building Permit but in no event longer than within a twelve-month time period.

Transport terminal: Terminal facilities and/or yard for storage or servicing trucks and/or freight trains with or without a warehouse for the temporary storage of goods in transit and with or without maintenance facilities.

Trailer: A highway vehicle designed, constructed and equipped for use as a dwelling and which is capable of being hauled or towed, or is self-propelled, including any such vehicle so converted as would make it immobile.

Trailer or Mobile Home Court: a parcel of land on which there is located or intended to be located two or more trailers or mobile homes occupied for living purposes where all utility service is supplied.

Use: the purpose for which a building or land is designed, arranged, or intended or for which a building or a tract of land is or may be occupied or maintained

Warehouse: A building used primarily for the storage of goods and materials, for distribution, but not for sale on the premises.

Yard: A space open to the sky, located between a building or structure and a lot line, unoccupied except by fences, walls, poles, paving, and other customary yard accessories.

Yard, front: A yard extending the full width of the lot and situated between the street line and the nearest point of the building.

Yard, rear: A yard the full width of the lot and situated between the rear line of the lot and the nearest part of the main building projected to the side line of the lot.

Yard, side: A yard situated between the nearest point of the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed a side line.

### 310 TYPES OF DISTRICTS

For the purpose of this Ordinance, the City of Gardner is hereby divided into the following types of districts:

<u>Full Title</u>	<u>Abbreviation</u>
Single Family Residential 1	SFR1
Rural Residential 2	RR2
General Residential 3	GR3
Commercial 1	COM1
Commercial 2	COM2
Industrial 1	IND1
Industrial 2	IND2
Flood Plain Districts	FPD
Water Supply Protection District	WSPD
Development Overlay District 1	DOD1

### 320 LOCATION OF DISTRICTS

Said Districts are located and bounded as shown on a map entitled **‘ZONING MAP OF GARDNER, MASSACHUSETTS, Scale 1” = 1,000 feet, updated August 1, 1988’**, as updated and on file in the Office of the City Clerk, City Engineer’s Office and Department of Community Development and Planning, as amended. The Zoning Map with all explanatory matters thereon is hereby made a part of this Ordinance.

1. Where a boundary is shown as following a street, railroad, or utility, the boundary shall be the centerline thereon unless otherwise indicated.
2. Where a boundary is shown outside a street, railroad, or utility, and approximately parallel to the nearest line thereof, and the figure placed on the Zoning Map between the boundary and such line shall be the distance in feet between them, as measured at a right angle from such line unless otherwise indicated.
3. Where a boundary is shown as following a water course, the boundary shall coincide with the centerline thereof as said line existed at the date of the Zoning Map.
4. Where the location of a boundary line is otherwise uncertain, the Building Commissioner shall determine its position in accordance with the distance in feet from other lines as given or as measured from the scale of the map.
5. Where a district boundary line divides a lot, the regulations applying to the portion of such lot in the less restricted district may be considered as extending not more than 50 feet into the more restricted portion, but only if the lot has frontage on a street in the less restricted district.

#### **410 PERMITTED USES IN RESIDENTIAL, COMMERCIAL AND INDUSTRIAL DISTRICTS**

In Residential, Commercial and Industrial Districts, no building or structure shall be erected or used and no premises shall be used except as set forth in the table of use regulations herein and in accordance with the following notations:

**P - Permitted** Use

**SP - Use allowed under** Special Permit

**NP – Not Permitted/Prohibited** Use

Permitted uses and uses allowed by Special Permit from either the Zoning Board of Appeals, Planning Board or the City Council shall be in conformity with the provisions of Section 1180 Special Permits and shall not be detrimental or offensive or tend to reduce property values in the same or adjoining districts by reason of dirt, dust, glare, odor, fumes, smoke, gas, sewage, refuse, noise, vibration or danger of explosion or fire.

See Section 1010 Site Plan Review for applicability of site plan review.

**415 TABLE OF USES**

<i>Description of Use</i>	<b>Single Family RES. 1</b>	<b>Rural RES. 2</b>	<b>General RES. 3</b>	<b>COMM. 1</b>	<b>COMM. 2</b>	<b>IND. 1</b>	<b>IND. 2</b>
<b><u>Residential Uses</u></b>							
1. Single Family detached dwelling	P	P	P	P	NP	NP	NP
2. Single Family detached dwelling for personnel required for safe operation of a permitted use	NP	NP	NP	NP	NP	P	P
3. Two family dwelling	P	SP	SP	NP	NP	NP	NP
4. Three or four family dwellings	SP	SP	SP	SP	NP	NP	NP
5. Multifamily dwelling	SP	NP	SP	SP	NP	NP	NP
6. Hotel/Motel	NP	SP	NP	P	P	SP	SP
7. Rooming house	NP	SP	SP	SP	NP	NP	NP
8. Bed and Breakfast	SP	SP	SP	SP	NP	NP	NP
9. Assisted living facility	NP	SP	SP	SP	SP	SP	SP
10. Open Space Residential Development	NP	SP	NP	NP	NP	NP	NP
<b><u>General and Institutional Uses</u></b>							
11. Agricultural use - non-exempt	SP	P	SP	SP	SP	SP	SP
12. Agricultural use - exempt	P	P	P	P	P	P	P
13. Commercial greenhouses-any greenhouse operation where there is more than 200 square feet of gross floor area	SP	SP	SP	SP	SP	SP	SP
14. Farmstand, non-exempt	NP	SP	NP	P	NP	NP	NP
15. Use of land or structures for religious purposes	P	P	P	P	P	P	P
16. Schools--public, religious, sectarian or private	P	P	P	P	P	P	P
17. Colleges and dormitories accessory thereto	P	P	P	P	P	P	P
18. Child care facility	P	P	P	P	P	P	P
19. Adult social day care facility	SP	SP	SP	SP	SP	SP	SP
20. Hospital, sanitarium, nursing, rest or convalescent home	SP	SP	SP	SP	SP	SP	SP
21. Human service program operated out of a residential structure	P	P	P	P	P	P	P
22. Library, museum, art gallery	SP	P	P	P	P	NP	NP
23. Civic center	NP	SP	NP	SP	SP	NP	NP
24. Municipal Use	P	P	P	P	P	P	P
25. Essential services	NP	SP	SP	P	P	P	P

<i><b>Description of Use</b></i>	<b>Single Family RES. 1</b>	<b>Rural RES. 2</b>	<b>General RES. 3</b>	<b>COMM. 1</b>	<b>COMM. 2</b>	<b>IND. 1</b>	<b>IND. 2</b>
26. Country or tennis club, lodge building or other non-profit social, civic, conservation, or recreational use	NP	P	P	P	P	NP	NP
27. Cemetery	NP	SP	NP	NP	NP	NP	NP
28. Earth Moving and Alteration	<b>See Section 1060</b>						
<i><b>Business Uses</b></i>							
29. Mixed use	SP	NP	SP	P	NP	NP	NP
30. Professional office	NP	NP	NP	P	P	NP	NP
31. Professional office or studio within the principal building of a residence	NP	NP	SP	P	P	NP	NP
32. Office building	NP	NP	NP	P	P	P	P
33. Home occupation	P	P	P	P	NP	NP	NP
34. Convenience retail	SP	NP	P	P	P	NP	NP
35. Retail Store up to 15,000 s.f.	NP	NP	NP	P	P	NP	NP
36. Retail Store over 15,000 s.f.	NP	NP	NP	SP	SP	SP	NP
37. Bank or other financial institution	NP	NP	NP	P	P	P	NP
38. Craft, consumer, personal service establishment dealing directly with the general public	NP	NP	NP	P	P	P	NP
39. Undertaking establishment or funeral home	NP	SP	SP	P	P	NP	NP
40. Motor vehicle light service	NP	NP	NP	SP	SP	SP	NP
41. Salesroom for motor vehicles, trailers, boats, farm implements, or machinery with repair services and storage permitted	NP	NP	NP	NP	P	P	NP
42. Motor vehicle general repairs	NP	NP	NP	NP	SP	P	NP
43. Motor vehicle body repair, soldering or welding shop	NP	NP	NP	NP	SP	P	SP
44. Restaurant serving food or beverages only to persons inside a building	NP	SP	NP	P	P	P	NP
45. Restaurant, fast food	NP	NP	NP	NP	SP	NP	NP
46. Restaurant serving food or beverages with live or mechanical entertainment	NP	SP	NP	SP	P	NP	NP
47. Wholesale office or showroom, with storage limited to floor samples only	NP	NP	NP	P	P	P	P
48. Wholesale office or showroom with storage permitted on property	NP	NP	NP	SP	P	P	P
49. Indoor amusement or recreational place or place of assembly provided that the building is so insulated and maintained as to confine noise to the premises and is located not less than one hundred feet from a residential district	NP	NP	NP	P	P	NP	NP
50. Commercial clubs and/or recreational establishments such as swimming pools, tennis courts, ski clubs, camping areas, skating rinks or other commercial facilities offering outdoor recreation	NP	SP	NP	P	P	NP	NP

<i>Description of Use</i>	<b>Single Family RES. 1</b>	<b>Rural RES. 2</b>	<b>General RES. 3</b>	<b>COMM. 1</b>	<b>COMM. 2</b>	<b>IND. 1</b>	<b>IND. 2</b>
51. Public or commercial outdoor amusement or recreation use but not including outdoor movie theater	NP	NP	NP	NP	P	P	NP
52. Bus station or terminal or railroad station for passengers	NP	NP	NP	P	P	P	NP
53. Transport terminal	NP	NP	NP	NP	NP	P	P
54. Contracting business and equipment storage yard	NP	NP	NP	NP	SP	P	NP
55. Drive-in or open-air business and appurtenant buildings or structures for any use permitted in Commercial 1 District except fast food restaurants	NP	SP	NP	SP	P	SP	NP
56. Animal clinic or veterinary hospital	NP	SP	NP	NP	P	P	NP
57. Commercial Kennel	NP	SP	NP	NP	NP	NP	NP
58. Printing or publishing establishment	NP	NP	NP	P	P	P	P
59. Adult Uses	NP	NP	NP	NP	NP	NP	SP
<b><u>Industrial Uses</u></b>							
60. Light manufacturing using electric power only and causing no external disturbances to abutters	NP	NP	NP	SP	SP	P	P
61. Telegraph, telephone and express offices, radio, television and film broadcasting studios	NP	NP	NP	P	P	P	P
62. Warehouse and storage facilities including storage in the open. <sup>1</sup>	NP	NP	NP	NP	NP	P	P
63. Converting, fabricating, manufacturing, altering, finishing and/or assembling	NP	NP	NP	NP	NP	P	P
64. Scientific or research laboratory	NP	NP	NP	NP	SP	SP	SP
65. Distributorships dealing with commercial and industrial supplies	NP	NP	NP	NP	SP	P	P
66. All other industrial uses not expressly referred to above or not expressly prohibited	NP	NP	NP	NP	NP	SP	SP
<b><u>Accessory Uses</u></b>							
67. In-Law apartment within a single-family dwelling	P	P	P	P	NP	NP	NP
68. In-Law apartment in a detached structure	SP	SP	SP	SP	NP	NP	NP
69. Family Day Care Home, Small	SP	P	P	P	SP	SP	SP
70. Family Day Care Home, Large	SP	SP	SP	SP	SP	SP	SP
71. Customary home occupation	P	P	P	P	NP	NP	NP
72. Free-standing aerial antenna towers and Wind Energy Conversion Systems.	NP	NP	NP	NP	NP	SP	SP
73. Land uses accessory to scientific development or production	NP	SP	NP	SP	SP	SP	SP

<sup>1</sup> Storage in the open shall be screened from public view. The preferred method of such screening shall be a landscaped arrangement of plantings; if this is not feasible, opaque fencing shall be used



**Prohibited industrial uses.**

- Acetylene gas, cyanide compound or oxygen manufacture.
- Asphalt manufacture or refining.
- Chlorine or bleaching powder manufacture.
- Creosote manufacture.
- Distillation of coal or wood.
- Drop forge shop.
- Explosives, fireworks, or ammunition manufacture.
- Gypsum, cement, plaster, or plaster of paris manufacture.
- Incineration, reduction or dumping of offal, garbage or refuse on a commercial basis (except where controlled by the City)
- Junk yard, junk storage, scrapping of autos and parts and the salvage thereof.
- Linoleum manufacture.
- Match manufacture. Fertilizer manufacture.
- Fumigation plants.
- Glue or size manufacture from fish or animal offal.
- Storage, collection, treatment, burial, incineration or disposal of radioactive wastes, including but not limited to low level waste

## **420 NONCONFORMING USES AND STRUCTURES**

### **421 Applicability**

This Zoning Ordinance shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or Special Permit issued before the first publication of notice of the public hearing required by M.G.L. c. 40A, s. 5 at which this Zoning Ordinance, or any relevant part thereof, was adopted. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished unless authorized hereunder.

### **422 Nonconforming Uses**

The Zoning Board of Appeals may award a Special Permit to change a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered by the Zoning Board of Appeals:

- a. Change or substantial extension of the use;
- b. Change from one nonconforming use to another, less detrimental, nonconforming use.

#### **422.1 Reversion to Nonconformity.**

No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use.

### **423 Nonconforming Structures**

The Zoning Board of Appeals may award a Special Permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following types of changes to nonconforming structures may be considered by the Zoning Board of Appeals:

- a. Reconstructed, extended or structurally changed;
- b. Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent;

#### **423.1 Variance Required**

Except as provided in subsection 423.3 and 423.4, below, the reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity shall require the issuance of a variance from the Zoning Board of Appeals.

#### **423.2 Special Permit Required**

Except as provided in subsection 423.3 and 423.4 below, the reconstruction, extension or structural change of a nonconforming structure where there is an extension of an exterior wall at or along the same nonconforming distance within a required yard, then the Zoning Board of Appeals may award a Special Permit.

#### **423.3 Reconstruction after Catastrophe or Demolition.**

Except as provided for in 423.4 below, a nonconforming structure may be reconstructed after a catastrophe or after demolition in accordance with the following provisions:

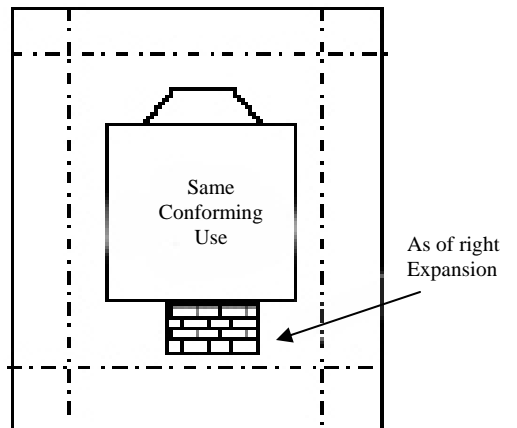
- a. Reconstruction of said premises shall commence within two years after such catastrophe or demolition.
- b. Building(s) as reconstructed shall be located on the same footprint as the original nonconforming structure, shall be only as great in volume or area as the original nonconforming structure, and shall meet all applicable requirements for yards, setback, and height.
- c. In the event that the proposed reconstruction would (a) cause the structure to exceed the volume or area of the original nonconforming structure or (b) exceed applicable requirements for yards, setback, and/or height or (c) cause the structure to be located other than on the original footprint, a Special Permit shall be required from the Zoning Board of Appeals prior to such demolition.

**423.4. Nonconforming Single and Two Family Residential Structures.**

Nonconforming single and two family residential structures may be reconstructed, extended, altered, or structurally changed upon a determination by the Building Commissioner that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure. The following circumstances shall not be deemed to increase the nonconforming nature of said structure:

- a. alteration to a structure located on a lot with insufficient area which complies with all current setback, yard, building coverage, and building height requirements.

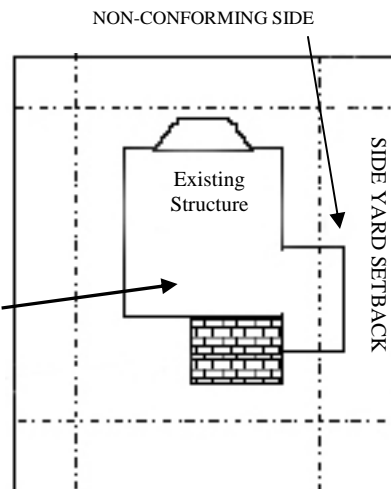
EXPANSION OF CONFORMING STRUCTURE  
& USE ON NON CONFORMING LOT



- b. alteration to a structure located on a lot with insufficient frontage which complies with all current setback, yard, building coverage, and building height requirements.

- c. alteration to a structure which encroaches upon one or more required yard or setback areas, where the alteration will comply with all current setback, yard, building coverage and building height requirements.

As-of-Right expansion/  
change (when other  
dimensional requirements  
are met)



In the event that the Building Commissioner determines that the nonconforming nature of such structure would be increased by the proposed reconstruction, extension, alteration, or change, the Zoning Board of Appeals may, by Special Permit, allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

**425 ABANDONMENT OR NON-USE.**

A nonconforming use or structure which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this Zoning Ordinance.

## **510 FLOOD PLAIN OVERLAY DISTRICT**

### **511 Statement of Purpose & Location**

The Floodplain Overlay District is herein established as an overlay district.

The purposes of the Floodplain Overlay District are to:

1. Ensure public safety through reducing the threats to life and personal injury;
2. Eliminate new hazards to emergency response officials;
3. Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;
4. Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;
5. Eliminate costs associated with the response and cleanup of flooding conditions;
6. Reduce damage to public and private property resulting from flooding waters.

**Location:** The District includes all special flood hazard areas designated on the City of Gardner Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the NFIP dated July 2, 1981 as Zone A, AE, AH, AO, A1-30, A99, V, V1-30, VE and the FEMA Flood Boundary & Floodway Map (FLOODWAY) dated July 2, 1981, both maps which indicate the 100-year regulatory floodplain. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM. The FIRM and FLOODWAY are incorporated herein by reference and are on file with the Building Commissioner, City Clerk, Planning Board, Conservation Commission and City Engineer.

Excluding from the above described flood plain overlay district that portion of the Greenwood Brook from High Street to East Broadway as enclosed by a culvert pipe of adequate size and as shown on FIRM and FLOODWAY Numbers 250305-0009 and 250303-0009B respectively, both dated July 2, 1981. Further enclosure of Greenwood Brook will be permitted if dual culverts of five (5) feet in diameter are installed to pass the 100-year flood without causing an increase in flood level.

### **512 Definitions**

Area of Special Flood Hazard is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, A1-30, AE, A99, V1-30, VE, or V.

Base Flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Development means any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

District means floodplain district.

Federal Emergency Management Agency (FEMA) administers the National Flood Insurance Program (NFIP). FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

Flood Boundary And Floodway Map means an official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500 year floods and the 100-year floodway. (For maps done in 1987 and later, the floodway designation is included on the FIRM.)

Flood Hazard Boundary Map (FHBM) means an official map of a community issued by FEMA where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A or E.

Flood Insurance Rate Map (FIRM) means an official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

Flood Insurance Study means an examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

Lowest Floor means the lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of NFIP Regulations 60.3.

Manufactured Home shall be defined as set forth in Section 2 herein.

New Construction means, for floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community. For the purpose of determining insurance rates, new construction means structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later.

One-Hundred-Year Flood - see Base Flood.

Regulatory Floodway - see Floodway

Special Flood Hazard Area means an area having special flood and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, V, V1-30, VE.

Structure means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. Structure, for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on a foundation. For the latter purpose, the term includes a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

Substantial Damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

Zone A means the 100-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local, or other data.

ZONE A1-30 and ZONE AE (for new and revised maps) means the 100-year floodplain where the base flood elevation has been determined.

ZONE AH and ZONE AO means the 100-year floodplain with flood depths of 1 to 3 feet.

ZONE A99 means areas to be protected from the 100-year flood by federal flood protection system under construction. Base flood elevations have not been determined.

ZONES B, C, AND X are areas identified in the community Flood Insurance Study as areas of moderate or minimal flood hazard. Zone X replaces Zones B and C on new and revised maps.

### **513 Floodplain Overlay District Boundaries And Base Flood Elevation And Floodway Data**

#### **1. Base Flood Elevation And Floodway Data**

- a. **Floodway Data.** In Zones A, A1-30, and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- b. **Base Flood Elevation Data.** Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A zones.

### **514 Notification Of Watercourse Alteration**

In a riverine situation, the City Engineer shall notify the following of any alteration or relocation of a watercourse:

1. Adjacent Communities
2. Bordering States (optional)
3. NFIP State Coordinator  
Massachusetts Department of Conservation and Recreation  
251 Causeway Street, Suite 600-700  
Boston, MA 02114-2104
4. NFIP Program Specialist  
Federal Emergency Management Agency, Region I  
99 High Street, 6th Floor  
Boston, MA 02110

### **515 Use Regulations**

#### **515.1 Compliance with State Regulations**

The Floodplain Overlay District is established as an overlay district to all other districts. All development in the district, including structural and non-structural activities, whether permitted by right or by Special Permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

1. Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR 3107, "Flood Resistant Construction");
2. Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);

3. Inland Wetlands Restriction, DEP (currently 310 CMR 13.00);
4. Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);

Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

#### **515.2 Local Use Regulations**

1. Within Zones AH and AO on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.
2. In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the City of Gardner FIRM or Flood Boundary & Floodway Map Community-Panel Numbers 250305 0001 through 0009 encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
3. All subdivision proposals must be designed to assure that:
  - a. such proposals minimize flood damage;
  - b. all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
  - c. adequate drainage is provided to reduce exposure to flood hazards.
4. Existing contour intervals of site and elevations of existing structures must be included on plan proposal.
5. There shall be established a "routing procedure" which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, City Engineer, Building Commissioner and Planning Director for comments which will be considered by the appropriate permitting board prior to issuing applicable permits.

#### **515.3 Permitted Uses**

The purpose of the Flood Plain Overlay District as noted above, is to preserve and maintain the ground water table; to protect the public health and safety, persons and property against the hazards of flood water inundation; for the protection of the community against the costs which may be incurred when unsuitable development occurs in swamps, marshes, along water courses, or in areas subject to floods and to conserve natural conditions, wildlife, and open spaces for the education, recreation and general welfare of the public.

Notwithstanding the provisions hereof, nothing herein shall be deemed to permit a building, structure or use which is not permitted in the underlying district.

1. Within a Flood Plain Overlay District, no dwelling or building shall be erected, altered, or used and no premises shall be used except for one or more of the following uses:
  - a. Any woodland, grassland, wetland, agricultural, horticultural or recreational use of land or water not requiring filling. Buildings and sheds not accessory to any of the Flood Plain uses are permitted by Special Permit from the Zoning Board of Appeals. Notice of each Flood Plain building permit application shall be given to the City Public Works Department, to the City Board of Health, to the City Planning Board and to the City Conservation Commission as well as all other parties as required.



The Zoning Board of Appeals, on hearing such application, shall consider, in addition to any factors said Board deems pertinent, the following aspects with respect to flooding and Flood Plain District Zoning provisions; that any such building or structure shall be designed, placed and constructed to offer a minimum obstruction to the flow of water; that it shall be firmly anchored to prevent floating away; and that it shall be constructed in accordance with the requirements of the State Building Code, Section 3107.

Applications for revisions to the FIRM should be submitted to FEMA for review and approval under the Letter of Map Amendment and Letter of Map Revision process.

#### **515.4 Prohibited Uses**

1. Notwithstanding Section 515.3 above, the following shall be prohibited in the Flood Plain Overlay District:
  - a. landfill or dumping.
  - b. drainage other than Flood Control Works by an authorized public agency.
  - c. damming or relocation of any water course except as part of an over-all drainage basin plan.
  - d. permanent storage of materials or equipment.
2. In any Flood Plain Overlay District after the adoption of this provision, no land, building, or structure shall be used for sustained human occupancy except dwellings theretofore lawfully existing, or land, buildings or structure which comply with the provisions of this Ordinance.
3. All encroachments, including fill, new construction, substantial improvements to existing structure, and other development are prohibited in the Floodway, unless certification by a Registered Professional Engineer is provided by the applicant demonstrating that such encroachment shall not result in any increase in Flood levels during the occurrence of the 100-year Flood.

### **520 WATER SUPPLY PROTECTION OVERLAY DISTRICT**

#### **521 Purpose**

The purpose of the Water Supply Protection Overlay District is:

1. to promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses;
2. to preserve and protect existing and potential sources of drinking water supplies;
3. to conserve the natural resources of the City; and
4. to prevent temporary and permanent contamination of the environment.

#### **522 Authority**

The Water Supply Protection Overlay Districts are adopted pursuant to authority provided by M.G.L. c. 40A and the Home Rule Amendment, Article 89 of the Amendments to the Constitution of the Commonwealth.

#### **523 Definitions**

For the purposes of this Section, the following words and phrases shall be defined as follows. References to statutes and regulations shall be deemed a reference to such law or regulation as of the effective date of this Ordinance:

Aquifer - Geologic formation composed of rock, sand, or gravel that contains significant amounts of

potentially recoverable water.

Automobile graveyards and junkyards - An establishment or place of business which is used, maintained, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts, as defined in M.G.L. c.140B, s.1.

Commercial fertilizers - Any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use, or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and gypsum, as defined in M.G.L. c.128, s.64.

De-icing chemicals - Sodium chloride, chemically treated abrasives, or other chemicals used for snow and ice removal.

Earth Removal - The removal or relocation of geologic materials such as topsoil, sand, gravel, metallic ores, or bedrock.

Hazardous material - Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water. Hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as toxic or hazardous under M.G.L. c.21C and 21E and 310 CMR 30.00, and also include such products as solvents and thinners in quantities greater than normal household use.

Impervious surface - Material or structure on, above, or below the ground that does not allow precipitation to penetrate directly into the soil.

Landfills and open dumps - A facility or part of a facility for solid waste disposal (excluding transfer facilities) established in accordance with the provisions of 310 CMR 19.006.

Recharge Areas - Areas that collect precipitation or surface water and carry it to aquifers.

Sanitary Wastewater - Any water-carried putrescible waste resulting from the discharge of water closets, laundry tubs, washing machines, sinks, showers, dishwashers, or any other source.

Soil conditioner - Any manipulated substance or mixture of substances whose primary function is to modify the physical structure of soils so as to favorably influence plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and gypsum, as defined in M.G.L. c. 128, s.64.

Storage or landfilling of sludge and septage - Use of land to store sludge or septage as those terms are defined in 310 CMR 32.00.

Surface Water – all water that is open to the atmosphere and subject to surface runoff.

Surface Water Source – any lake, pond, reservoir, river, stream or impoundment designated as a public water supply in the Massachusetts Surface Water Quality Standards, 314 CMR 4.00.

Wastewater treatment works - Any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation, or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage or disposal, all as defined and regulated by 314 CMR 5.00.

Water Supply Protection District I (WSPD I) - The protective radius required around a public water supply well or wellfield, as set forth in 310 CMR 22.02's definition of "Zone I."

Water Supply Protection District II (WSPD II) - WSPD II is bounded by the most extensive of the following parameters: (a) that area of the aquifer that contributes water to a public water supply well or wellfield under the most severe pumping and recharge conditions than can realistically be anticipated, as set forth in 310 CMR 22.02's definition of "Zone II;" (b) Interim Wellhead Protection Areas, as

established in the City and defined by 310 CMR 22.02; and the surrounding high and medium yield aquifers within the City of Gardner, having a transmissivity of 1,350-4,000 ft<sup>2</sup>/d (potential well yield 100 to 300 gal/min). Further, all Surface Water Protection Districts as set forth on the City of Gardner Water Supply Protection Districts Map as more fully set forth below shall be included in the WSPD II.

Water Supply Protection District III (WSPD III) - That area of land beyond the area of WSPD II from which surface water and groundwater drain into Zone II, as that term is defined in 310 CMR 22.02.

## **524 Establishment of Districts**

The Water Supply Protection Overlay Districts are herein established as overlay districts and shall include all lands within the City of Gardner lying within the primary and secondary recharge areas of groundwater wells and watershed areas of reservoirs, which provide public water supply. The Water Supply Protection Districts are described on a map entitled "Gardner Water Supply Protection District", as depicted on the map entitled "Water Supply Protection District", prepared for the Gardner Planning Board, dated February 1987, and Snake Pond Well Water Supply Protection District delineation as shown on a plan entitled "City of Gardner, Massachusetts, Scale 1" = 400', January 8, 1999, Gardner Survey Department, Arthur E. Young, City Engineer, Revised: May 7, 1999." Both maps are on file in the office of the City Engineer. The Water Supply Protection Districts are hereby incorporated as part of the "Zoning Map of Gardner, Massachusetts" on file in the City Clerk's Office.

### **524.1 Boundary Disputes**

Where the bounds of the Water Supply Protection Districts are in dispute, as delineated on the Water Supply Protection Districts Map, the burden of proof shall be upon the owners of the land in question to show where they should properly be located. Resolution of boundary disputes shall be through a Special Permit application to the Planning Board. Any application for a Special Permit under this subsection shall be accompanied by documentation prepared by a person who meets the following two requirements:

- \* Is experienced in delineating hydrogeologic zones in Massachusetts; and
- \* Has one of the following credentials:

<b>TITLE</b>	<b>CONFERRING ENTITY</b>
Registered Professional Hydrogeologist	American Institute of Hydrology
Certified Professional Geologic Scientist	American Institute of Professional Geological Scientists
Registered Professional Engineer, Sanitary	Commonwealth of Massachusetts
Certified Ground Water Professional	Association of Ground Water Scientists and Engineers
Certified Professional Soil Scientist	American Registry of Certified Professionals in Agronomy, Crops, and Soils, Ltd.

**A. WSPD II Boundary Disputes.** Where the WSPD II is bounded by: (a) that area of the aquifer that contributes water to a public water supply well or wellfield under the most severe pumping and recharge conditions than can realistically be anticipated, as set forth in 310 CMR 22.02's definition of "Zone II," the applicant shall provide information in substantial conformance with the criteria set forth in 310 CMR 22.00, as administered by the Massachusetts Department of Environmental Protection, to show where the boundary should properly be located; (b) an Interim Wellhead Protection Area, the applicant shall provide the results of a survey by a registered surveyor; (c) a medium yield aquifer having a transmissivity of 1,350-4,000 ft<sup>2</sup>/d (potential well yield 100 to 300 gal/min), the applicant shall provide geologic and hydrologic

information to show transmissivity rates at the subject property.

**B. WSPD III Boundary Disputes.** The applicant shall provide information in substantial conformance with the criteria set forth in 310 CMR 22.00 for the delineation of "Zone III", as administered by the Massachusetts Department of Environmental Protection, to show where the boundary should properly be located.

**C. All Surface Water Zone Disputes.** Where delineated bounds are in dispute, the burden of proof shall be upon the owner(s) of the land in question to show where the bounds should properly be located. However, the Planning Board shall retain authority to determine the proper location with regard to the boundary of the Surface Water Zone in accordance with 310 CMR 22.00.

### **525 Use Regulations**

The Water Supply Protection Districts are overlay districts superimposed over the underlying districts set forth in this Zoning Ordinance. Within a Water Supply Protection District, the requirements of the underlying district continue to apply, except where the requirements of the Water Supply Protection District are more stringent.

The Planning Board shall not grant a Special Permit under this section unless the applicant demonstrates that the provisions governing the Water Supply Protection District(s), under this Section 520 may be waived without detrimental effect to water quality as specified herein.

1. Uses within WSPD I: Uses within WSPD I shall be governed by the standards set forth in 310 CMR 22.00 with regard to "Zone I" therein.
2. Uses within WSPD II and WSPD III: Uses are prohibited where indicated by "NP" in the following schedule, and require a Special Permit where indicated by "SP", even where the underlying district requirements are more permissive. Uses permitted in a Water Supply Protection District are indicated by "P". Where a portion of the lot is located partially within WSPD III and partially outside the Water Supply Protection Districts, site design shall, to the extent feasible, locate potential pollution sources outside the District boundaries.

1. PRINCIPAL USES	WSPD II	WSPD III
(a) Manufacture, use, storage, transport, or disposal of hazardous materials as a principal activity	NP	NP
(b) Landfills and open dumps	NP	NP
(c) Automobile graveyards and junkyards	NP	NP
(d) Wastewater treatment works for non-sanitary wastewaters that are subject to 314 CMR 5.00, including privately owned facilities, except the following: (1) replacement or repair of existing system(s) that will not result in a design capacity greater than the design capacity of the existing system(s)	NP	SP
(e) Wastewater treatment works for sanitary wastewaters that are subject to 314 CMR 5.00, including privately owned facilities	SP	SP
(f) Landfilling of sludge and septage	NP	NP
(g) Storage of sludge and septage	SP	SP
(h) Road salt stockpile or storage of other de-icing chemicals in the following manner:		
(1) outside a structure	NP	NP
(2) within a structure designed to prevent the generation and escape of contaminated runoff or leachate	SP	SP

1. PRINCIPAL USES	WSPD II	WSPD III
(i) Gasoline station, motor vehicle repair or body shop, marine repair shop, car wash	NP	SP
(j) Earth moving or alteration, in accordance with Section 1070 of the Code of the City of Gardner; provided, however, that no earth moving and alteration shall take place within 6 feet of historical high groundwater as determined from monitoring wells and historical table fluctuation data compiled by the USGS, except for excavations for building foundations, roads or utility works, unless the substances removed are redeposited within 45 days of removal to achieve a final grading greater than 6 feet above the historical high groundwater mark	NP	SP
(k) Extension or alteration of any building, structure, or use of pre-existing institutional and governmental uses, to be served by on-site wastewater disposal system with a design in compliance with 310 CMR 15.00 or served by city sewerage	SP	SP
(l) Single family residential development requiring approval under the subdivision control law subject to these requirements	SP	SP
(m) Single family residential dwelling shall only be approved on lots of:	P	P
(i) at least three acres if the lot is not served by city sewerage or		
(ii) at least two acres if the lot is served by city sewerage	P	P
(n) Construction of any building not otherwise specifically stated herein.	NP	NP
(o) Conservation of soil, water, plants and wildlife	P	P
(p) Outdoor recreation, nature study, boating, fishing, and hunting where otherwise legally permitted	P	P
(q) Duckwalks, landings, foot and bicycle paths	P	P
(r) Proper operation and maintenance of existing water bodies and dams, flash boards and other water control, supply and conservation devices	P	P
(s) Maintenance and repair of any existing structure provided there is no increase in impermeable areas	P	P
(t) Non-intensive agricultural uses (pastures, light grazing, hay), nursery, conservation, forestry and harvesting provided that fertilizers and herbicides and other leachable materials are not stored outdoors nor used in amounts excessive to the levels recommended by the Massachusetts Cooperative Extensive Service	P	P
2. ACCESSORY USES	WSPD II	WSPD III
(a) Underground storage of hazardous materials, including fuel oil and gasoline	NP	SP
(b) Aboveground storage of hazardous materials in quantities greater than associated with normal household use, other than fuel oil for residential heating purposes	SP	SP
(c) Any use generating hazardous wastes in quantities greater than associated with normal household use, except the following:	NP	SP
(1) very small quantity generators, as defined by 310 CMR 30.00;		
(2) household hazardous waste collection centers or events operated pursuant to 310 CMR 30.390;		
(3) waste oil retention facilities required by M.G.L. c. 21, s. 52A;		
(4) treatment works approved by the DEP for treatment of contaminated ground or surface waters		

2. ACCESSORY USES	WSPD II	WSPD III
(d) Storage of animal manure. Within WSPD II, such storage must be within an enclosed building or contained in accordance with the specifications of the U.S. Soil Conservation Service	SP	P
(e) Storage of commercial fertilizers and soil conditioners. Within WSPD II, such storage must be within a structure designed to prevent the generation and escape of contaminated runoff or leachate	SP	P
3. OTHER USES	WSPD II	WSPD III
(a) Rendering impervious more than 15 percent of the lot, or 2500 sq. ft., whichever is greater, excluding operations associated with the construction or occupancy of a single-family dwelling	SP	P
(b) Stockpiling and disposal of snow and ice containing de-icing chemicals if brought in from outside the district	NP	SP
(c) Industrial and commercial uses which discharge process wastewater on-site	NP	NP

## **526 Special Permit Procedures**

### **526.1 Special Permit Granting Authority**

1. The Special Permit Granting Authority (SPGA) shall be the Planning Board. Such Special Permit may be granted if the SPGA determines that the intent of this Section 520 as well as the specific criteria herein are met. In making such determination, the SPGA shall give consideration to the simplicity, reliability, and feasibility of the control measures proposed and the degree of threat to groundwater quality which would result if the control measures failed.
2. The Planning Board shall adopt and from time to time amend rules and regulations which shall prescribe the size, form, content, and style of the plans and procedures for submission and approval of such Special Permit. These rules and regulations shall be filed with the City Clerk.
3. Review by Other Boards and Officials. Whenever an application for a Special Permit is filed with the Planning Board under this Section 520, said board shall transmit within six (6) working days of the filing of the completed application, copies of the application, accompanying site plan, and other documentation, to the Board of Health, Conservation Commission, Building Commissioner, Director of Public Works, Fire Chief, and the City Engineer for their consideration, review, and report. The copies necessary to fulfill this requirement shall be furnished by the applicant. An application shall not be deemed complete until all copies of required information and documentation have been filed with the Planning Board. The Planning Board shall notify applicants by registered mail, within 14 days of submittal, of incomplete application status, and the applicant shall have 14 days from the mailing of such notice to complete an application. Failure to complete an application within such time shall result in a return of all materials to the applicant, without prejudice. Reports from other boards and officials shall be submitted to the Planning Board by the date of the Public Hearing, but in any case within thirty-five (35) days of receipt of the reviewing party of all of the required materials; failure of these reviewing parties to make recommendations after having received copies of all such required materials shall be deemed a lack of opposition thereto. In the event that the Public Hearing by the Planning Board is held prior to the expiration of the 35 day period, the Planning Board shall continue the Public Hearing to permit the formal submission of reports and recommendations within that 35 day period. The Decision/Findings of the Planning Board shall contain, in writing, an explanation for any departures from the recommendations of any reviewing party.

### **526.2 Applicability**

Any Special Permit required under this Section 520 shall be in addition to, and separate from, any other

Special Permit required under this Ordinance.

### **526.3 Submittals**

All applications for Special Permits shall contain the information listed below, unless waived or modified by the SPGA, with reasons therefor.

1. A site plan, submitted on 24-inch by 36-inch sheets, on a minimum scale of one inch (1") equals 40 feet, and prepared by a Registered Professional Engineer and a Registered Land Surveyor. Site plans submitted under this section shall also include the following:
  - a. All property lines
  - b. All adjacent public streets
  - c. All existing and proposed buildings, structures, parking areas, and service areas
  - d. All facilities for sewage, refuse, and other waste disposal
  - e. Facilities for surface water drainage, both temporary and permanent
  - f. Future expansion areas
  - g. Provisions to prevent contamination of groundwater by petroleum products
  - h. Drainage recharge features and provisions to prevent loss of recharge
  - i. Provisions to prevent soil compaction
  - j. Provisions to prevent seepage from sewer pipes
  - k. Location of wetlands, streams, water bodies and flood plain
  - l. Existing drainage patterns
  - m. Existing woodlands
  - n. Areas having slopes exceeding 15%
  - o. Areas to be disturbed by construction
  - p. Areas where earth and other materials subject to erosion will be temporarily stockpiled
  - q. Areas to be used for disposal or storage of construction debris, stones, stumps, etc. if within the District
  - r. Temporary and permanent erosion control measures planned, such as sediment basins, storm water basins, diversion, rip-rap, stabilization seedings, etc.
  - s. Temporary work roads to be used during projects
  - t. Location and size of septic system
  - u. Method to contain spillage in fuel filling areas
2. A storm drainage plan showing:
  - a. Locations of drains and culverts, and names of streams, rivers, ponds or reservoirs in the City in which they flow
  - b. Discharge peaks and expected velocities at drain or culvert outlets
  - c. Conditions above and below outlets and expected flow velocities
  - d. Supporting computations for the above

- e. A grading plan showing existing topography and planned grade along existing and/or proposed street or highway profiles
3. A siltation and sedimentation control plan including:
- a. Sediment and erosion control structures such as diversions, waterways, slope stabilization structures, sediment basins, etc., in sufficient detail to implement their installation together with referred standards for soil erosion and sediment as appropriate, and design calculations as required for each structure; Seeding and/or sodding requirements for all exposed areas including seedbed preparation, seed mixtures, lime, fertilizer and mulching requirements with referenced standards;
  - b. Schedule or sequence of operation with starting dates for clearing and/or grading, timing for storm drain and culvert installation, duration of exposure of soils and critical area stabilizations, both temporary and permanent. Indicate date when critical areas stabilization, paving, seeding, mulching, or sodding is to be completed; and
  - c. General notes for sediment control that spell out the procedures for implementing the plan.
4. The Technical Reference to be used to prepare and review site plans is “Guidelines for Soil Water conservation in Urbanizing Areas of Massachusetts,” U.S.D.A. Soil Conservation Service, Amherst, Massachusetts. Specific guidelines to be used include, but are not limited to:
- a. Limit grading to only those areas actively undergoing current construction.
  - b. The smallest practical area of land should be exposed at one time during development.
  - c. Limit the length of time graded areas are exposed.
  - d. Provide temporary or permanent stabilization of disturbed areas at the earliest opportunity. Limit exposure to less than 60 days.
  - e. Retain and protect as much of the natural vegetation as possible.
  - f. Permanent improvements such as streets, utilities, storm sewers, vegetated waterways, and other features of the development should be scheduled for installation to the greatest extent possible before removing the vegetative cover from an area scheduled for building construction.
  - g. Protect all fill slopes and cut slopes exceeding five feet in height from storm run-off through the use of diversion berms, drop chutes and other acceptable means.
  - h. Rough-graded rights-of-way awaiting installation of utilities and/or pavement should be protected by the installation of interceptor berms across the right-of-way as to reduce the length of slope between berms to not more than 250 feet.
  - i. On sites where the above procedures are impractical or not acceptable where the topography permits, install sediment basins, desilting basins, or silt traps to remove sediment from runoff waters.
5. A narrative statement detailing all of the information set forth below, if applicable:
- a. A complete list of all chemicals, pesticides, fuels, or other potentially hazardous materials, including but not limited to road salt or de-icing chemicals, manure, and fertilizers or soil conditioners, to be used or stored on the premises in quantities greater than associated with normal household use, accompanied by a description of the measures



proposed to protect all storage containers from vandalism, corrosion, and leakage, and to provide for control of spills.

- b. A description of all potentially hazardous wastes to be generated in quantities greater than associated with normal household use, accompanied by a description of the measures proposed to protect all waste storage containers from vandalism, corrosion, and leakage, and to provide for control of spills.
- c. For underground or aboveground storage of hazardous materials, certification by a Registered Professional Engineer that such storage facilities or containers are (i) in compliance with all applicable federal or state regulations, (ii) in compliance with design specifications, as prepared by a Registered Professional Engineer, and (iii) are designed with secondary containment adequate to contain a spill the size of the container's total storage capacity.
- d. For any proposed activity on a lot which will render more than 15 percent of the total lot area or more than 2,500 sq. ft. impervious, a system for groundwater recharge must be provided that does not degrade groundwater quality, by stormwater infiltration basins or similar system covered with natural vegetation. Dry wells shall be used only where other methods are infeasible. Such basins and wells shall be preceded by oil, grease and sediment traps to facilitate removal of contaminants.
- e. For stockpiling or disposal of snow from outside the district, earth moving and alteration, storage of sludge or septage, manure storage, treatment works, and/or discharge or process wastewater, a narrative statement, prepared by a Registered Professional Engineer, assessing the impacts, if any, of the proposed activity on groundwater and surface water quality on the premises, adjacent to the premises, and on any wellfield(s) downgradient from the proposed activity or use, accompanied by a description of the measures proposed to protect such wellfields.

#### **527 Special Permit Criteria**

Special Permits shall be granted only if the SPGA determines, after reviewing the recommendations of the reviewing parties delineated in Section 526 above that groundwater quality resulting from on-site wastewater disposal or other operations on-site shall not fall below the more restrictive of federal or state standards for drinking water, or, if existing groundwater quality is already below those standards, on-site disposal or operations shall result in no further deterioration.

Decision. The Planning Board may approve, approve with conditions, or deny an application for a Special Permit that is governed, in any manner, by the provisions of this Section.

#### **528 No Variance**

There shall be no variances from the Water Supply Protection District granted without a written advisory report from the Gardner Board of Health.

### **530 DEVELOPMENT OVERLAY DISTRICT 1**

#### **531 Purpose**

To increase redevelopment options consistent with city-wide growth and development policies within economically stressed areas Zoned Industrial 1 and/or Commercial 1 by providing for additional uses as a matter of right or Special Permit and altering dimensional requirements.

### **532 Scope of Authority**

1. The Development Overlay District 1 may be applied over some or all existing parcels that are zoned Industrial 1 and Commercial 1, it may not be applied over any other zoning district.
2. Any use permitted by right or Special Permit in the underlying districts, as provided for by this Ordinance, shall continue to be permitted in addition to all other uses permitted by the Development Overlay District 1.

### **533 Designation of Development Overlay District 1**

City Council retains sole authority to designate an area as Development Overlay District 1. Such designation is limited to areas zoned Industrial 1 and Commercial 1 that clearly exhibit the impacts of economic stress. Criteria for measuring economic stress include vacancy rates, incidences of arson, declining property values, building code violations, property tax delinquencies and inclusion in ongoing revitalization efforts.

The Planning Board may request designation of a Development Overlay District 1 only after consultations with relevant agencies and a public hearing. The request for designation shall contain a report of finding.

### **534 Additional Uses**

1. Properties zoned Industrial 1 and designated a Development Overlay District 1 shall be permitted the following uses as a matter of right:
  - a. Library, museums, art gallery or civic center.
  - b. Country or tennis club, lodge building or other non-profit social, civic, conservation or recreational use.
  - c. Professional Office and Retail Store, regardless of s.f.
  - d. Indoor amusement or recreation place of assembly provided that the building is so insulated and maintained as to confine noise to the premises.
  - e. Commercial clubs and/or recreational establishments such as swimming pools, tennis courts, ski clubs, camping areas, skating rinks or other commercial facilities offering outdoor recreation.
2. Properties zoned Industrial 1 and designated a Development Overlay District 1 shall be permitted the following uses under a Special Permit by the Zoning Board of Appeals as provided in Section 1180: Special Permits:
  - a. Three or four family dwelling, Multifamily dwelling and Mixed Use.
  - b. Restaurant serving food or beverages only to persons inside a building.
  - c. Restaurant serving food or beverages with live or mechanical entertainment.

### **535 Dimensional Requirements**

1. Any new structure substantial improvement or alternative to an existing structure involving more than 50 percent of that structure's gross floor area shall be subject to the following:
  - a. Minimum lot size: 5,000 square feet
  - b. Minimum frontage: none
  - c. Front yard setback: none
  - d. Side yard setback: 10 feet; or none if abuts commercial or industrial use
  - e. Rear yard setback: 20 feet

- f. Maximum building height: 5 stories or 60 feet
  - g. Maximum building coverage including accessory buildings 65%
2. Improvements or alterations to an existing structure involving less than 50 percent of that structure's gross floor area shall not be subject to dimensional requirements, except that the minimum lot size shall not be less than 5,000 square feet and the structure shall not expand in terms of percentage of lot coverage.

### **536 Parking Requirements**

Off-street parking shall be provided according to the schedule of parking uses, Section 7, except as follows:

<b>Parking Requirements: Development Overlay District</b>	
1. Retail Store	One space per 250 sq. ft. gross floor area
2. Business or Professional office	One space per 300 sq. ft. gross floor area
3. Restaurants; Lodge or Clubs; or other place of Assembly	One space per four seats
4. Library, museums, art gallery or civic center	Two spaces per 1,000 sq. ft. gross floor area
5. Mixed Use	Sum of various uses computed separately

### **537 Site Plan Review**

The Site Plan review and approval provisions of Section 1010 Site Plan Review, shall apply to the following types of structures and uses in a Development Overlay District I:

- 1. Any new structure, or group of new structures under the same ownership on the same or contiguous lots that consists of 2,500 square feet or more of gross floor area.
- 2. Any improvement, alteration, or change in use, which results in an increase of 2,500 square feet or more of gross floor area.

## **540 SMART GROWTH PLANNED UNIT DEVELOPMENT (SGPUD)**

### **541 Purpose**

By Special Permit, the Planning Board seeks to facilitate an alternative pattern of land development which promotes compact, mixed use development that is convenient to a variety of transportation options, to preserve open space, and to promote the creation of new housing units that are contained in a variety of building types and laid out in a manner to promote the establishment of a pedestrian-oriented neighborhood(s). This type of development may be determined to be sufficiently advantageous to render it appropriate to grant special permission to depart from the normal requirements of the district to the extent authorized by the Ordinance.

SGPUDs are allowed in the RR2, COM2, IND1 and IND2 zones. Proposed SGPUD development shall be located on a lot or contiguous lots of not less than 60,000 s.f. in the RR2 zone, and shall employ public water and sewage. In the COM2 and IND2 zones, the tract shall contain no less than 60,000 s.f. In the IND1 zone, the tract shall contain no less than 50,000 s.f. A development plan shall be presented for the entire tract.

The development shall be subject to all zoning regulations, except those which through the grant of a Special Permit, the Planning Board has permitted increased density, parking requirements less than those ordinarily required, and additional uses.

#### **542 Allowed Uses**

In addition to the uses allowed in the underlying district, the following uses are eligible for consideration:

- a. Mixed-use;
- b. Single, two, three, and four family dwellings;
- c. Multifamily dwellings;
- d. Assisted living facilities;
- e. Convenience retail;
- f. Business or professional office;
- g. Restaurant;
- h. Office building.

#### **543 Density and Dimensional Requirements**

1. The minimum open space requirement of the overall tract in the RR2 shall be 30%. In the COM2 and IND1 the minimum open space requirement of the overall tract is 20%.
2. Multifamily residential structures shall contain no more than 8 units per building and shall be clustered to foster neighborhood connections. Residential density shall not exceed 20 units per acre to be calculated exclusive of areas located in flood zones, and wetlands.
3. The area developed for residential use shall not exceed 50% of the overall tract.
4. Setbacks – industrial uses shall be set back a minimum of 20 feet from commercial uses, and 50 feet from residential uses. The Planning Board retains the authority to increase minimum setbacks at its discretion in the interest of safety, circulation, or other factors.
5. Maximum building height shall be 65'.

#### **544 Parking and Other Requirements**

1. Parking shall be in accordance with those requirements set forth in Section 750 Schedule of Parking Uses-General Requirements. The Planning Board may allow for shared use parking if the applicant can prove the specified parking demand will occur at different and complementary times of day. The use of structure parking is encouraged to reduce impervious surfaces and enhance overall design of the development.
2. Proposed developments which include over 12 residential units shall require 20% of the overall number of units to be affordable to persons and families earning 80% or less of the area's median income, and these units shall remain affordable for a minimum period of 30 years.

#### **545 Site Plan Review**

All developments proposed for SGPUD shall undergo site plan review. For the convenience of the applicant, site plan review and request for a Special Permit pursuant to this section may be held concurrently to the degree feasible. The applicant will be responsible for submitting a request and meeting all submission requirements concurrently in order to streamline notice and hearing requirements.

## **550 INDUSTRIAL & COMMERCIAL HERITAGE PLANNED UNIT DEVELOPMENT (ICHPUD)**

### **551 Purpose**

By Special Permit, the Planning Board seeks to facilitate an alternative pattern of land development which promotes adaptive re-use of its older, formerly industrial mill and commercial buildings and sites. In so doing, it also seeks to promote a mix of uses, opportunities for flexible “live-work” spaces, and favor pedestrian-scaled developments that maintain the historic fabric of the structures and surroundings, and minimize the impacts of motor vehicles. This type of development may be determined to be sufficiently advantageous to render it appropriate to grant special permission to depart from the normal requirements of the district to the extent authorized by the Ordinance.

ICHPUDs are allowed in the IND1, IND 2, and COM1 zones. Proposed ICHPUD development shall be located on a lot or contiguous lots of not less than 60,000 s.f. which are occupied by historic commercial and/or industrial structures whose preservation and reuse is in the community’s interest. New structures may be part of the overall development, but must complement existing buildings. A development plan shall be presented for the entire tract.

The development shall be subject to all zoning regulations, except those which through the grant of a Special Permit, the Planning Board has permitted increased density, parking requirements less than those ordinarily required, and additional uses.

### **552 Allowed Uses**

In addition to the uses allowed in the underlying district, the following uses are eligible for consideration:

- a. Mixed use
- b. Multifamily dwellings
- c. Live-work units
- d. Convenience retail
- e. Retail
- f. Business or professional office
- g. Restaurant

### **553 Density and Dimensional Requirements**

1. Residential density shall not exceed 40/units per acre to be calculated exclusive of flood zones and wetlands.
2. The area developed for residential use shall not exceed 50% of the overall tract.

### **554 Historic Preservation and Parking Requirements**

1. Historic structures are to be preserved and reused. For the purpose of this section, historic shall mean those buildings which are determined to be on or eligible for listing on the National Register of Historic Places. Eligibility is determined by the Gardner Historical Commission. If an historic structure is proposed for demolition, the Gardner Historical Commission must first determine that the structure is not preferably preserved prior to consideration of the ICHPUD Special Permit.
2. Parking shall be in accordance with those requirements set forth in Section 750 Schedule of Parking Uses-General Requirements. The Planning Board may allow for shared use parking if the applicant can prove the specified parking demand will occur at different and complementary times of day. The use of

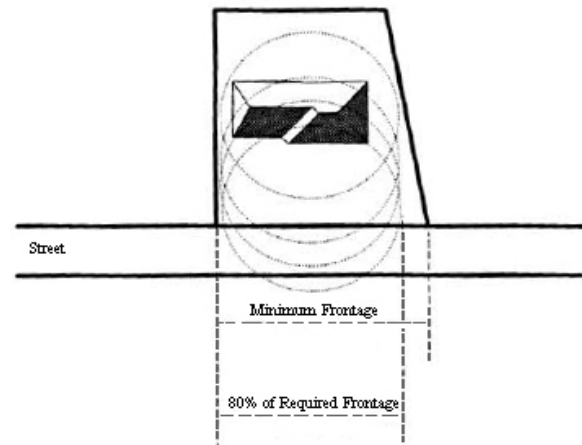
structure parking is encouraged to reduce impervious surfaces and enhance overall design of the development.

**555 Site Plan Review**

All developments proposed for ICHPUD shall undergo site plan review. For the convenience of the applicant, site plan review and request for a Special Permit pursuant to this section may be held concurrently to the degree feasible. The applicant will be responsible for submitting a request and meeting all submission requirements concurrently in order to streamline notice and hearing requirements.

## 610 GENERAL REQUIREMENTS

1. A dwelling, building or any structure hereafter erected in any district shall not be located on a lot having less than the minimum requirements and no more than one dwelling shall be built upon any single lot, except as hereinafter provided.
2. A lot or parcel of land having an area or a frontage of lesser amounts than required in the following schedule may be considered as coming within the area and frontage requirements of this section, provided that at the time of building, such lot has an area of more than five thousand square feet, has a frontage of fifty feet or more and is in a district zoned for residential use and provided further that such lot or parcel of land was shown on a parcel or described in a deed duly recorded or registered at the time of the adoption of this Ordinance and did not at the time of such adoption adjoin other land of the same owner available for use in connection with such lot or parcel.
3. The minimum front yard dimensions required in the following schedule are to be measured from the street line where a plan of the way or street is on file and platted with the City Engineer's Office or with the Registry of Deeds, or in the absence of such a plan or plot, from the line twenty-five feet from and parallel with the center of the traveled way or street.
4. The limitation of height of buildings and structures in the following schedule shall not apply in any district to chimneys, ventilators, towers, spires, or other ornamental features of buildings which features are in no way used for living purposes.
5. All lots shall have a lot width such that the center of a circle having a minimum diameter of at least 80% of the required frontage of the lot can be passed along a continuous line from the lot line along which the frontage is measured to any and all points of the principal structure or proposed principal structure without the circumference intersecting any side lot line.



**620 TABLE OF LOT, AREA, FRONTAGE, YARD, AND HEIGHT REQUIREMENTS<sup>1</sup>**

	MINIMUM LOT DIMENSIONS		MINIMUM YARD DIMENSIONS IN FEET <sup>2</sup>			MAXIMUM HEIGHT OF BUILDING		MAXIMUM % BLDG. COVERAGE INCLUDING ACCESSORY BUILDING	% OPEN SPACE REQUIRED
	AREA SQUARE FEET	FRONTAGE IN FEET	FRONT	SIDE	REAR	STORIES	FEET		
SINGLE FAMILY RESIDENTIAL 1	12,500	100	30	15	20	3	36	30%	
RURAL RESIDENTIAL 2	60,000	150	30	20	40	3	36	25%	
GENERAL RESIDENTIAL 3	8,000	75	20	10	20	3	36	65%	
Multifamily Use	3,500/unit	75	30	20	20	3	36	30%	40%
COMMERCIAL 1	10,000	80	10	10	20	5	60	30%	
Multifamily Use	2,500/unit	80	30	20	20	3	36	30%	40%
COMMERCIAL 2	30,000	100	30	20	30	4	48	50%	
INDUSTRIAL 1	10,000	80	10	10	20	7	84	65%	
INDUSTRIAL 2	30,000	150	40	20	30	7	84	50%	

1. See Infill Development (Section 630), Overlay Districts and Planned Unit Developments (Section 5) Special Residential (Section 8) and Supplemental (Section 10) regulations for applicable dimensional requirements pursuant to special conditions.
2. No accessory building or structure shall be located within the required front yard area. No accessory building shall be located in any side yard area nearer to the side lot line than five feet, or in a rear yard area nearer to the rear lot line than five feet, or nearer to another principal or accessory building than five feet.



## **630 INFILL DEVELOPMENT**

### **631 Purpose**

In order to maintain the character and streetscapes of Gardner's downtown and older neighborhoods, the Planning Board is authorized to allow increases or reductions in dimensional and parking requirements by Special Permit for infill developments.

### **632 Applicability**

Infill developments must be located on a single lot which is bounded on a minimum of two (2) sides with existing buildings. Only lots in the GR3, COM I, and SFR1 shall be considered for infill development. Allowed uses are determined by those allowed in the Table of Uses, Section 415.

### **633 Special Permit**

All applications for infill development shall also be subject to Site Plan review. In addition to the criteria for Special Permits generally (Section 1180), the Planning Board shall consider the following:

1. Whether and by how much the building height or scale will exceed that of nearby structures;
2. Whether and by how much the building will exceed the height of trees in the vicinity;
3. Whether any potential intrusiveness has been resolved through increased yards, design or building form, or by other means;
4. Whether and by how much shadowing on abutting land or streets will be increased, or privacy will be diminished;
5. Whether there are fire protection concerns created by the increased density;
6. What the traffic consequences are of any increased floor area;
7. Whether the increase is needed for the proposal to proceed; and
8. What the community benefits are from the proposal, including considering of taxes, employment, and service.

**710 DEFINITIONS**

For the purposes of this section, the following terms shall have the following meanings:

1. Access Driveway--the travel lane that allows motor vehicles ingress from the street and egress from the site.
2. Building service area--a room or rooms in a building used to house electrical or mechanical equipment necessary to provide central utility service to the building, such as a boiler room.
3. Interior Driveway--a travel lane located within the perimeter of a parking lot which is not used to directly enter or leave parking spaces. An interior driveway shall not include any part of the access driveway.
4. Maneuvering Aisle--a travel lane located within the perimeter of a parking lot by which motor vehicles directly enter and leave parking spaces.
5. Net Floor Area--the total of all floor areas of a building not including storage areas, stairways, elevator wells, restrooms, common hallways and building service areas.
6. Parking Stall Length of Line--the longitudinal dimension of the stall measured parallel to the angle of parking.
7. Width of Parking Stall--the linear dimensions measured across the stall and parallel to the maneuvering aisle.

**720 GENERAL PROVISIONS**

Except as otherwise provided in this section, no building or structure shall be located upon any lot and no activity shall be conducted upon any lot unless the required parking facilities are provided on site in accordance with this section.

**721 Change of Use**

For all zoning districts, except Commercial 1, a change in use where the existing use (or in the case of a vacancy, the next previous use) did not provide for the number of on site parking spaces required by this Ordinance, then the proposed use shall only have to provide an additional number of parking spaces equal to the increase, if any, between the number required under this Ordinance for the existing use and the number required for the proposed use.

**722 Commercial 1 Districts**

For Commercial 1 Districts, no additional parking is required for the following:

- a. A change in use or rearrangement of uses in an existing building that does not increase the total floor area within the building;
- b. The replacement of an amount of floor area equal to that in existence at the time of enactment of this amendment to the Ordinance;
- c. The addition of a second floor to one-story buildings;
- d. Federal, State or municipal uses;
- e. Having applied (a), (b), (c) and (d) immediately above, an increase in total floor area that results in a net increase in the number of required parking spaces may be accommodated off site when adequate municipal parking facilities are available to serve the land use. Adequacy of municipal parking

facilities shall be determined via the Site Plan Review application and review procedures, Section 1010 Site Plan Review of this Ordinance. A major entrance of the land use should be within 500 feet of the municipal parking facility. Shared parking opportunities should be recognized where the same parking space can be utilized by two or more different land uses due to differences in principal hours for the uses involved.

### **730 UNDETERMINED USES**

Where the use of a building or buildings has not been determined at the time of application for a building permit or Special Permit, the parking requirements applicable to the most intensive use allowed in the District where such undetermined use is to be located shall apply provided, however, that the number of parking spaces actually built not exceed the number required by the actual use or uses of the building.

### **740 RELIEF FROM PARKING REGULATIONS**

In the following instances, relief from Parking Regulations may be granted by Special Permit from the Zoning Board of Appeals, pursuant to Section 1180 Special Permits.

1. In the case of a change from a nonconforming use to a conforming use, that the benefits of a change to a conforming use outweigh the lack of parking spaces, or
2. In the case of a change from one conforming use to another conforming use, that the lack of parking spaces will not create undue congestion or traffic hazards on or off the site.

### **750 SCHEDULE OF PARKING USES-GENERAL REQUIREMENTS**

#### **751 Comparable Use Requirements**

Where a use is not specifically included in the Schedule of Parking Uses, it is intended that the regulations for the most nearly comparable use specified shall apply.

#### **752 Schedule of Parking Uses**

<b>Principal Use</b>	<b>Parking Spaces Required</b>
a. Dwelling	1 per dwelling unit with 1 or fewer bedrooms 2 per dwelling unit with two or more bedrooms
b. Home occupation	1 per non-resident employee
c. Hotel or Motel	1 per room plus 1 per 400 sq. ft. of public meeting area and restaurant space
d. Bed & Breakfast	2 spaces, plus 1 per guest unit
e. Assisted Living; Nursing Home; Group Home; Rest Home	1 per 2 beds
f. Educational/Schools: Nursery/Child Care Elementary/Middle/Junior High School College and University	3 per 1,000 gross sq. ft. 1.2 per employee .25 per student 1.2 per 1,000 gross sq. ft.
g. Hospital	3 per patient bed
h. Convenience retail	2 spaces per 1,000 sq. ft. gross floor area
i. Retail Store	1 per 250 sq. ft. of net floor area
j. Bank	1 per 200 sq. ft. of net floor area
k. General Business or professional	1 per 300 sq. ft. of net floor area

Principal Use	Parking Spaces Required
office; personal service establishment	
l. Libraries, museums, art galleries	2.5 per 1,000 sq. ft. of gross floor area
m. Medical or Dental Office	4.2 per 1,000 sq. ft. of gross floor area
n. Restaurant	1 per 4 seats
o. Fast Food Restaurant	1 per 70 sq. ft. net floor area
p. Religious; Lodge or Club; Civic Center or other Place of Assembly.	1 per 75 sq. ft. assembly area or 1 per 4 seats
q. Motor Vehicle, general & body repair.	1 per each service bay plus 1 per employee
r. Motor vehicle light service	2 per service bay plus 1 per employee
s. Mixed use	Sum of various uses computed separately
t. Transit Station	1 per 600 sq. ft. gross floor area
u. Truck terminal	1 per 250 sq. ft. devoted to office use plus one per company vehicle operating from premises
v. Veterinary clinic/commercial kennel	2 per 1,000 sq. ft. plus 1 per employee
w. Industrial	1 per 2,000 sq. ft. net floor area for the first 20,000 s.f., plus 1 per each additional 10,000 sq. ft.

### **753 Loading Areas**

One or more off-street loading areas shall be provided for any business that may be regularly serviced by tractor-trailer trucks and other similar delivery vehicles, so that adequate areas shall be provided to accommodate all delivery vehicles expected at the premises at any one time. Loading areas shall be located at either the side or rear of each building and shall be designed to avoid conflicts with vehicles using the site or vehicles using adjacent sites.

### **760 STANDARD DIMENSIONAL REGULATIONS**

Off-street parking facilities shall be laid out and striped in compliance with the following minimum provisions:

ANGLE OF PARKING *IN DEGREES	WIDTH OF PARKING STALL	PARKING STALL LENGTH OF LINE	WIDTH OF MANEUVERING AISLE
90* (two-way)	9.0'	18.5'	24'
60* (one-way)	10.4'	22'	18'
45* (one-way)	12.7'	25'	14'
Parallel (one-way)	8.0'	22'	14'
Parallel (two-way)	8.0'	22'	18'

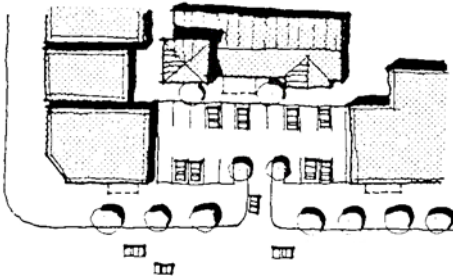
## 770 DESIGN REQUIREMENTS FOR PARKING LOTS AND FACILITIES

### 771 Parking Location and Layout

1. To the extent feasible, parking areas shall not be located to the forward of any building front line on the lot.

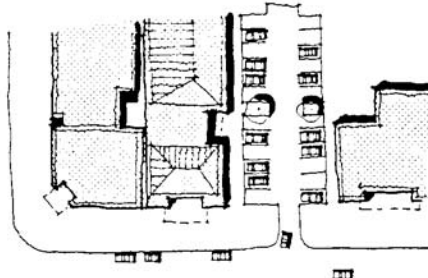
#### **Not Acceptable:**

*Parking lots along the full length of the streetfront are generally inappropriate.*



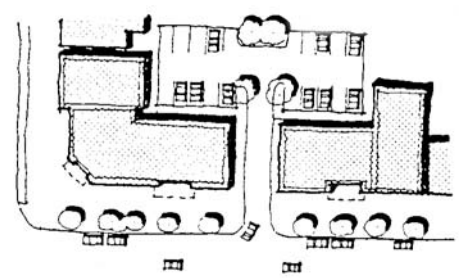
#### **Acceptable:**

*In certain situations, limited streetfront parking may be acceptable.*



#### **Preferred:**

*Parking lots situated behind shops and offices are preferred.*



- a. Notwithstanding the above, the Planning Board may grant permission in the course of Site Plan Review to locate not more than eight (8) parking spaces in front of the principal building, where such location promotes a better site layout. As condition of such permission, the Board may require that provisions be made for a common access way linking the property with existing or future adjacent uses.
2. Required parking spaces, loading areas and driveways shall be provided and maintained with suitable grading, paved surfaces and adequate drainage. No parking space or other paved surface, other than access driveway(s) or walkway(s), shall be located within 10 feet of any lot line, and notwithstanding the foregoing, no parking space or other paved surface other than access driveway(s) or walkway(s) shall be located within the limits of a landscaped buffer area.
  3. Each lot may have one access driveway which shall be at least 24 feet wide at its narrowest point but not more than 36 feet wide at its widest point. Each lot may have one additional access driveway for each 200 feet of frontage provided all such access driveway(s) shall be at least 200 feet apart on the lot measured from the centerline of each access driveway. In the case of an access driveway which shall be used for one-way traffic only, the minimum width may be reduced to 14 feet at its narrowest point.
  4. Interior driveways, other than maneuvering isles, shall be at least 20 feet wide for two-way traffic and 14 feet for one-way traffic.
  5. Adequate provisions for snow removal and/or snow storage must be made and indicated on site plans. Landscaped areas may not be used for snow storage.

### 772 Lighting and Landscaping Requirements

All surface parking areas containing more than 8 spaces shall be laid out and enhanced by landscaping in accordance with the following standards:

1. Parking lots, loading areas, storage areas, refuse storage and disposal areas, and service areas shall be screened from view, to the extent feasible, from all public ways, and from adjacent properties, by the use of planted buffers, berms, natural contours, fences or a combination of the above.

2. Parking areas shall contain 150 square feet of planted areas per 1,000 square feet of parking proposed, appropriately situated throughout the lot so as to break up large expanses of pavement.
3. Parking areas shall be screened along their perimeters from adjacent streets and properties using a combination of the following:
  - a. A buffer strip of at least 10 feet in width of densely planted shrubs or trees which are at least 2.5 feet high at the time of planting and are of a type that may be expected to form a year-round screen; parking areas containing more than 25 spaces shall require a planted buffer strip of 20 feet in width.
  - b. A wall, barrier, or fence of uniform appearance. There shall be a landscaped strip with a minimum width of 3 feet between the base of the wall, barrier, or fence and any street or abutting property. The wall, barrier, or fence is recommended to be 3 feet in height and shall not be more than 6 feet in height;
  - c. A landscaped earth berm at least three (3) feet in height and eighteen (18) feet in width.
  - d. The screening as required herein shall be located so as not to conflict with any corner visibility requirements or any other City Ordinances. Such screening may be interrupted by entrances or exits.
4. All artificial lighting shall be not more than eleven (11) feet in height in pedestrian areas, and fifteen (15) feet in parking lots, and shall be arranged and shielded so as to prevent direct glare from the light source onto any public way or any other property. All parking facilities which are used at night shall be lighted as evenly and fully as possible. The Planning Board shall require the applicant provide the type and intensity (lumens) of all proposed lighting for the parking areas.

### **773 Structured Parking Design Guidelines**

Placement of off-street parking spaces in structures is encouraged to limit impervious surfaces, promote efficient use of land, and enhance streetscapes. Parking structures are subject to the following performance standards:

1. Parking structures shall be no more than 40' in height. The height and mass of the structure should be consistent with the urban design fabric within which the structure is to be located.
2. The exterior façade should maintain a horizontal line throughout. The sloping nature of the interior structure, necessary in the design of parking structures, should not be repeated on the exterior façade.
3. Façades that face public rights-of-way should incorporate a repeating pattern that includes color change, texture change and material change, each of which should be integral parts of the structure -- not superficially applied trim, graphics, or paint. In addition, vertical elements should be incorporated into the exterior façade design in order to create a repeating pattern. This can be accomplished through the use of reveals, projecting ribs, or offsets. All such elements should repeat at intervals of no more than 30 feet.
4. A wall or other screening of sufficient height to screen parked vehicles and which exhibits a visually pleasing character should be provided. In commercial districts with an existing or planned urban design fabric, ground-level retail use is encouraged to enhance the streetscape. Where retail is not practical, other amenities, such as an art wall, are encouraged as means of enhancing the streetscape. The ground-level of the structure should never consist of a featureless length of a wall.
5. Pedestrian entrances should be well defined and attractive.

6. Areas of vehicular entry should be located on the side or the rear of the structure wherever possible to attract less attention. The presence and appearance of garage entrances should be minimized so that they do not dominate the street frontage.
7. Building should take advantage site topography to minimize the vehicular entry where possible.
8. Interior and exterior lighting shall be arranged to ensure public safety and shielded to prevent direct glare onto any public way or any other property. The Planning Board shall require the applicant to provide the type and intensity (lumens) of all proposed lighting for the parking structure.

**810 OPEN SPACE RESIDENTIAL DEVELOPMENT (OSRD)**

"Open Space Residential Development" shall mean a residential development in which the building and accessory uses are clustered together with reduced lot sizes, into one or more groups. The land not included in the building lots shall be permanently preserved as open space. The Planning Board may grant a Special Permit for an Open Space Residential Development subject to the following:

**811 Purpose**

The purpose of an Open Space Residential Development is to:

1. Encourage the preservation of common land for conservation, agriculture, open space and recreational use;
2. To preserve historical or archaeological resources;
3. To protect existing or potential municipal water supplies,
4. To protect the value of real property by promoting more sensitive siting of buildings and better overall site planning;
5. To promote better utilization of land in harmony with its natural features and with greater intent of the Zoning Ordinance through a greater flexibility in design; and to allow more efficient provision of municipal services.

**812 Procedures**

1. **Pre-Application Conference** - The applicant is very strongly encouraged to request a pre-application review at a regular business meeting of the Planning Board. If one is requested, the Planning Board shall invite the Development Review Committee and relevant agencies. The purpose of a pre-application review is to minimize the applicant's costs of engineering and other technical experts, and to commence negotiations with the Planning Board at the earliest possible stage in the development. At the pre-application review, the applicant may outline the proposed OSRD, seek preliminary feedback from the Planning Board and/or its technical experts, and set a timetable for submittal of a formal application. At the request of the applicant, and at the expense of the applicant, the Planning Board may engage technical experts to review the informal plans of the applicant and to facilitate submittal of a formal application for a OSRD Special Permit.
2. **Pre-Application Submittal** - In order to facilitate review of the OSRD at the pre-application stage, applicants are strongly encouraged to submit the following information:
  - a. **Site Context Map.** This map illustrates the parcel in connection to its surrounding neighborhood. Based upon existing data sources and field inspections, it should show various kinds of major natural resource areas or features that cross parcel lines or that are located on adjoining lands. This map enables the Planning Board to understand the site in relation to what is occurring on adjacent properties.
  - b. **Existing Conditions/Site Analysis Map.** This map familiarizes officials with existing conditions on the property. Based upon existing data sources and field inspections, this base map locates and describes noteworthy resources that should be left protected through sensitive subdivision layouts. These resources include wetlands, riverfront areas, floodplains and steep slopes, but may also include mature un-degraded woodlands, hedgerows, farmland, unique or special wildlife habitats, historic or cultural features (such as old structures or stone walls), unusual geologic formations and scenic views into and out from the property.



By overlaying this plan onto a development plan the parties involved can clearly see where conservation priorities and desired development overlap/conflict.

3. **Pre-Application Site Visit.** Applicants are encouraged to request a site visit by the Planning Board and/or its agents in order to facilitate pre-application review of the OSRD. If one is requested, the Planning Board shall invite the Development Review Committee and relevant agencies.
4. **Pre-Application Discussion of Design Criteria.** The design process and criteria set forth below should be discussed by the parties at the pre-application conference and site visit.
5. **Filing of Application.** Each application for a Special Permit for an Open Space Residential Development shall be filed with the Planning Board, with a copy filed forthwith with the City Clerk, and shall be accompanied by 10 copies of a preliminary plan of the entire parcel under consideration, prepared by a professional architect, engineer and landscape architect.

**a. Contents of Application.** Said application and plan shall be prepared in accordance with requirements for a preliminary subdivision plan in the Rules and Regulations of the Planning Board governing subdivision of land, whether or not the development constitutes a subdivision, and shall include proposed location, bulk, and height of all proposed buildings. In addition, the applicant shall provide the following information:

1. The number of dwellings which could be constructed under this Ordinance by means of a conventional development plan, considering the whole parcel, exclusive of water bodies, flood plain, and land prohibited from development by legally enforceable restrictions, easements, or covenants.
2. Applicants are required to demonstrate to the Planning Board that the following design process was performed by a certified Landscape Architect and considered in determining the layout of proposed streets, house lots, and open space.

**a. Step One: Identifying Conservation Areas.**

Identify preservation land by two steps. First, Primary Conservation Areas (such as wetlands, riverfront areas, and floodplains regulated by state or federal law) and Secondary Conservation Areas (including unprotected elements of the natural landscape such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats and cultural features such as historic and archeological sites and scenic views) shall be identified and delineated. Second, the Potentially Developable Area will be identified and delineated. To the maximum extent feasible, the Potentially Developable Area shall consist of land outside identified Primary and Secondary Conservation Areas.

**b. Step Two: Locating House Sites.**

Locate the approximate sites of individual houses within the Potentially Developable Area and include the delineation of private yards and shared amenities, so as to reflect an integrated community, with emphasis on consistency with the City's historical development patterns. The number of homes enjoying the amenities of the development should be maximized.

**c. Step Three: Aligning the Streets and Trails.**

Align streets in order to access the house lots. Additionally, new trails should be laid out to create internal and external connections to existing and/or potential future streets, sidewalks, and trails.

**d. Step Four: Lot lines.**

Draw in the lot lines.

6. **Review of Other Boards.** Before acting upon the application, the board shall submit application and plan to the following boards, which may review it jointly or separately: the Board of Health, the City Engineer, the Conservation Commission, and the Fire Department. Any such board or agency to which petitions are referred for review shall submit such recommendation as it deems appropriate to the Planning Board and the applicant. Failure to make recommendations within 35 days of receipt shall be deemed lack of opposition.
7. **Public Hearing.** After the opportunity for review by other boards has taken place, the Planning Board shall hold a hearing under this section, in conformity with the provisions of M.G.L. c.40A, s.9, and of the Zoning Ordinance and regulations of the Planning Board. The hearing shall be held within 65 days after filing of the application with the Board and the Clerk. Notice shall be given by publication and posted by first-class mailings to “parties in interest” as defined in M.G.L. c.40A, s.11. The decision of the board, and any extension, modification, or renewal thereof, shall be filed with the Board and Clerk within 90 days following the closing of the public hearing. Failure of the board to act within 90 days shall be deemed a grant of the permit for which applied. Issuance of the permit requires a unanimous vote of the five member board.
8. **Relation to Subdivision Control Act.** Planning Board approval of a Special Permit hereunder shall not substitute for compliance with the subdivision control act, nor oblige the Planning Board to approve any related definitive plan for subdivision, nor reduce any time periods for board consideration under that law. However, in order to facilitate processing, the Planning Board shall, insofar as practical under existing law, adopt regulations establishing procedures for submission of a combined plan and application which shall satisfy this section and the Planning Board’s regulations under the Subdivision Control Act.

**813 Findings of the Board**

The Board may grant a Special Permit under this section only if it finds that the applicant has demonstrated the following: That the Open Space Residential Development plan will be in harmony with the general purpose of the Ordinance and the requirements of M.G.L. c.40A, and the long range plan of the City; that it will not have a detrimental impact on the neighborhood; will be designed with due consideration for health and safety; and is superior to a conventional plan in preserving open space, minimizing environmental disruption, allowing for more efficient provision of services, or allowing for greater variety in prices or types of housing.

**814 Permitted Locations**

Open Space Residential Development shall be allowed by Special Permit in the RR2.

**815 Minimum Dimensional Requirements for Lots and Buildings**

Where the requirements of the OSRD differ from or conflict with the requirements of Section 6 of this Ordinance, the requirements established for OSRDs shall prevail. The following requirements shall be observed in all OSRDs. Where appropriate, the Planning Board may impose additional requirements upon the tract of land or on any parts thereof as a condition to the granting of a Special Permit:

1. Minimum Tract Area: Not less than five acres.
2. Maximum Density: One dwelling unit per 40,000 square feet.
3. Minimum lot area: Not less than 8,000 square feet.
4. Minimum frontage: Not less than 50 feet.

5. Minimum lot width: Not less than 50 feet.
6. Minimum front yard: No buildings or structures shall be located within 45 feet of a pre-existing street, or within 15 feet of a new street.
7. Minimum side and rear yards: Not less than 10 feet.
8. No buildings or structures shall be located within 30 feet of the boundary line of the tract or the common open space.
9. Where a residential building measures more than 3,000 square feet of gross floor area per dwelling unit, including any attached garages, the minimum setback from a new street, or way within the OSRD shall be 30 feet, and the minimum setback to the next residential building shall be 40 feet.
10. Attached and detached garages are highly encouraged to be located at the side or rear of the residential building, so as not to appear part of the front façade.
11. The Planning Board may impose other conditions on the locations of buildings and structures as it deems appropriate to enhance the purpose and intent of the OSRD.
12. A shared driveway is allowed for two adjoining lots.
13. Except as specified in a Special Permit granted under this section, all requirements of the Zoning Ordinance shall continue to apply.
14. The requirements related to the ownership, upkeep, liability, and maintenance of the open land shall be in perpetuity, and as such become the responsibility of the owners' heirs and assigns.

#### **816 Required Open Land**

1. At least 50% of the parcel, exclusive of wetlands or land set aside for buildings, roads and parking, shall be open land.
2. The minimum Common Open Space shall be laid out as one or more large, contiguous parcels that are distinct from parcels dedicated for other purposes and uses. Each Common Open Space parcel shall contain at least one access corridor to a street or way that shall be not less than 40 feet wide.
3. If the tract of land of the OSRD abuts adjacent open space or undeveloped lots, the Common Open Space shall be laid out to abut the adjacent open space or undeveloped lots.

#### **817 Use of the Common Open Space**

The Common Open Space shall be dedicated and used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, or for a combination of those uses. No other uses shall be allowed in the Common Open Space, except as provided for herein:

1. The proposed use of the Common Open Space shall be specified on a Land Use Plan and appropriate dedications and restrictions shall be part of the deed to the Common Open Space. The Planning Board shall have the authority to approve or disapprove particular uses proposed for the Common Open Space in order to enhance the specific purposes of OSRD.
2. The Common Open Space shall remain unbuilt upon, provided that an overall maximum of five (5) percent of such land may be subject to pavement and structures accessory to the dedicated use or uses of the Common Open Space, and provided that the Common Open Space may be subject to temporary easements for the construction, maintenance, and repair of roads, utilities, and sewer or drainage facilities serving the Open Space Residential Development or adjacent land.

3. In addition, a portion of the Common Open Space may also be used for the construction of leaching areas, if associated with septic disposal systems serving the OSRD, and if such use, in the opinion of the Planning Board, enhances the specific purpose of OSRD to promote better overall site planning. Septic disposal easements shall be no larger than reasonably necessary. If any portion of the Common Open Space is used for the purpose of such leaching areas, the Planning Board shall require adequate assurances and covenants that such facilities shall be maintained by the lot owners within the OSRD.
4. In addition, a portion of the Common Open Space may also be used for ways serving as pedestrian walks, bicycle paths, and access or egress to the OSRD or adjacent land, if such a use, in the opinion of the Planning Board, enhances the general purpose of this Ordinance and enhances better site and community planning, and if the Planning Board finds that adequate assurances and covenants exist, to ensure proper maintenance of such facilities by the owner of the Common Open Space.
5. Portions of the Common Open Space that are in excess of the minimum Common Open Space total area may be used for storm water detention and retention facilities serving the lots, streets, and ways in the OSRD, including infrastructure such as pipes, swales, catch basins, and manholes, and parcels and easements associated with such facilities.

#### **818 Ownership of the Common Open Space**

1. The open land, and such other facilities as may be held in common, shall be conveyed to one of the following, as determined by the Planning Board, subject to the following guidelines:

The Common Open Space shall be conveyed in whole or in part to:

- a. the City of Gardner and accepted by it; or
  - b. to a non-profit organization, the principal purpose of which is the conservation of open space and/or any of the purposes and uses to which the Common Open Space may be dedicated; or
  - c. The Common Open Space may also be conveyed to a corporation or trust owned or to be owned by the owners of lots within the Open Space Residential Development. The developer shall be responsible for the maintenance of the Common Open Space and any other facilities to be held in common until such time as the home association legally assumes said responsibility.
2. If the Common Open Space or any portion thereof is not conveyed to the City of Gardner, a perpetual restriction, approved by the Planning Board and enforceable by the City of Gardner, shall be imposed on the use of such land, providing in substance that the land be kept in its open or natural state and that the land shall not be built upon or developed or used except in accordance with the provisions of Open Space Residential Development as set forth herein and, if applicable, further specified in the decision of the Planning Board governing the individual Open Space Residential Development. The proposed ownership of all Common Open Space shall be shown on the Land Use Plan for the Open Space Residential Development. At the time of its conveyance, the Common Open Space shall be free of all encumbrances, mortgages or other claims, except as to easements, restrictions and encumbrances required by this Ordinance.
  3. Subject to the above, the open space may be used for recreational purposes including golf courses, riding trails, tennis courts, gardens, and swimming pools. The board may permit open land owned by a home association to be used for individual septic systems, or for common septic systems if it, and the Board of Health, are convinced that proper legal safeguards exist for management of a communally owned system.

### **819 Further Requirements**

1. No use other than residential or recreational shall be permitted.
2. No lot shown on a plan for which a permit is granted under this section may be further subdivided, and a notation to this effect shall be shown upon the plan.
3. No certificate of occupancy shall be issued by the Building Commissioner until he has certified to the Planning Board that the premises have been built in accordance with the plan approved by the Board hereunder.
4. The Board may impose other conditions, safeguards, or limitations on time and uses, pursuant to its regulations.
5. The Board may grant a Special Permit hereunder for Open Space Residential Development even if the proposed development is not subject to the subdivision control law..
6. Subsequent to granting of the permit, the Planning Board may permit relocation of lot lines within the Open Space Residential Development. However, any change in overall density, street layout, or open space layout will require further hearings.
7. Whether or not the Open Space Residential Development is a subdivision, all streets and ways, whether public or private, wastewater disposal, drainage facilities, and utilities shall be designed and constructed in compliance with the City of Gardner's Subdivision Rules and Regulations. Special exception(s) to the Subdivision Rules and Regulations may be authorized by the Planning Board in granting a Special Permit hereunder provided the Board determines such exception(s) is in the public interest and is not inconsistent with the purpose of Section 1180.

### **820 IN-LAW APARTMENTS**

It is the intent to provide for the use of a group of rooms in an existing, or in the plans of a new single family residence, as a so-called "In-Law" Apartment with its own kitchen and bathroom facilities, for the use of a limited number of persons such as in-laws, elderly persons, or grown children, subject to special precautions with respect to privacy, safety, number of occupants, and adequacy of water supply and sewage disposal; where the owner of the apartment is a resident of the premises; and where the use of such a group of rooms as an apartment is clearly accessory to the principal use of the premises as a single family residence. It is further the intent that the structural changes, if any, necessary to effect the in-law apartment use be sufficiently modest that such use could be terminated, and a single family re-occupy the entire premises, without substantial hardship in reconstruction.

All In-Law apartments must comply with the criteria below.

1. The intent of permitting in-law apartments is to:
  - a. Provide older homeowners with a means of obtaining rental income, companionship, security and services, and thereby to enable them to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave;
  - b. Add moderately priced rental units to the housing stock to meet the needs of smaller households and make housing units available to moderate income households who might otherwise have difficulty finding housing;
  - c. Develop housing units in single-family neighborhoods that are appropriate for households at a variety of stages in their life cycle;

- d. Protect stability, property values, and the single-family residential character of a neighborhood by ensuring that accessory apartments are installed only in owner occupied houses; and
- e. To provide housing units for persons with disabilities.

2. The Building Commissioner may issue a Building Permit authorizing the installation and use of an in-law apartment within an existing or new owner-occupied, single-family dwelling and the Zoning Board of Appeals may issue a Special Permit authorizing the installation and use of an in-law apartment in a detached structure on a single-family home lot only when the following conditions are met:

- a. The apartment will be a complete, separate housekeeping unit containing both kitchen and bath.
- b. Only one in-law apartment may be created within a single-family house or house lot.
- c. The owner(s) of the residence in which the accessory unit is created must continue to occupy at least one of the dwelling units as their primary residence. The Building Permit or Special Permit for the accessory apartment automatically lapses if the owner no longer occupies one of the dwelling units.
- d. Any new outside entrance to serve an in-law apartment shall be located on the side or in the rear of the building.
- e. The gross floor area of an in-law apartment (including any additions) shall not be greater than nine hundred (900) square feet.
- f. Once an in-law apartment has been added to a single-family residence or lot, the in-law apartment shall never be enlarged beyond the nine hundred (900) square feet allowed by this Ordinance.
- g. An in-law apartment may not be occupied by more than three (3) people.
- h. Three off-street parking spaces must be available for use by the owner-occupant(s) and tenants.
- i. The design and room sizes of the apartment must conform to all applicable standards in the Health, Building, and other codes.
- j. Building or Special Permits issued under this section shall specify that the owner must occupy one of the dwelling units. Permits and the notarized letters required in k and l below must be recorded in the Worcester County Registry of Deeds or Land Court, as appropriate, in the chain of title to the property, with documentation of the recording provided to the Building Commissioner, prior to the occupancy of the in-law apartment.
- k. Prior to issuance of a building or special permit, the owner(s) must send a notarized letter stating that the owner will occupy one of the dwelling units on the premises as the owner's permanent/primary residence, except for bona fide temporary absences.
- l. When a structure, which has received a building or special permit for an in-law apartment, is sold, the new owner(s), if they wish to continue to exercise the Permit, must, within thirty (30) days of the sale, submit a notarized letter to the Building Commissioner stating that they will occupy one of the dwelling units on the premises as their primary residence. This statement shall be listed as condition on any building and special permits which are issued under this Section.
- m. Prior to issuance of a Building Permit, a floor plan of one-quarter (1/4) inch to the foot must be submitted showing the building, including proposed interior and exterior changes to the building.

## **830 HOME OCCUPATIONS**

A home occupation as defined herein may be established in all Residential districts and the Commercial 1 district subject to the following requirements:

1. Such use shall be clearly secondary to the use of the premises for residential purposes;
2. Not more than one (1) person other than the residents of the premises shall be engaged in the conduct of the home occupation, whether an employee or otherwise;
3. No offensive noise, vibration, dust, heat, odors, heat, glare, or unsightliness shall be produced;
4. There shall be no public display or sales of goods or wares;
5. There shall be no signs except as permitted in Section 9;
6. There shall be no exterior storage of material or equipment nor other indication of such use or variation from the residential character of the premises;
7. There shall be adequate off-street parking spaces for visitors in connection with the home occupation which do not substantially alter the appearance of the premises as a residence;
8. Such use does not require the parking of more than three (3) vehicles used by clients, customers, or visitors on a regular basis.
9. Traffic generated by such use is not inconsistent with traffic usually associated with a single family residence.

**910 Definitions**

For the purposes of this section, the following terms shall have the following meaning:

1. Signs and Advertising Devices – any symbol, design or device used to identify or advertise any place of business, product, activity, or person.
2. Erecting – any constructing, relettering, extending, altering or changing of a sign other than repainting, repairing and maintaining.
3. Display Area – the total surface area of the sign. The display area of an individual letter sign or irregular shaped sign shall be the area of the smallest rectangle into which the letters or shape will fit. Where sign faces are placed back to back and face in opposite directions, the display area shall be defined as the area of one face of the design.

**911 General Regulations**

The following regulations shall apply in all districts:

1. No exterior sign or advertising device shall be erected except as provided by this Ordinance.
2. No sign that requires a sign permit under this Ordinance shall be erected except in the exact location and manner described in the permit.
3. No sign shall be erected that in any way creates a traffic hazard or obscures or confuses traffic control.
4. Signs shall not be illuminated between the hours of 11:00 p.m. and 7:00 a.m. unless related to an establishment operating during those hours.
5. The illumination from any sign shall be shaded, shielded, directed, and maintained at a sufficiently low intensity and brightness that it shall not affect the safe vision of operators of vehicles moving within the premises or on any adjacent public or private way.
6. Any sign that advertises or identifies products, businesses, services or activities that are no longer sold, located, or carried on at the premises shall be removed within 60 days after written notice by the Building Commissioner.
7. No sign shall be erected with any part closer than 10 feet from the traveled roadway or side or rear yard lot lines.

**912 Sign Permits**

No signs that require a sign permit shall hereafter be constructed except in conformity with a sign permit from the Building Commissioner.

1. Applicability – All signs shall require a sign permit, except as provided in Section 914.
2. Application – All applications for signs requiring a sign permit shall be obtained from the Building Commissioner and shall include at least:
  - a. The location, by street number, of the proposed sign;
  - b. The name and address of the sign owner and the owner of the premises where the sign is to be located, if other than the sign owner;
  - c. A scale drawing showing the proposed construction, method of installation or support, materials, colors, dimensions, location of sign on the site, and the method of illumination;



- d. Such other pertinent information as the Building Commissioner may require to ensure compliance with the Ordinance and other applicable law; and
- e. The application must be signed by the owner and the owner of the premises where the sign is to be located.

The Building Commissioner shall have the authority to reject any sign permit application that is not completed when submitted.

3. **Time Limitations** – The Building Commissioner shall approve or disapprove any application for a sign permit within 30 days of receipt of the application. If the Building Commissioner should fail to approve or disapprove an application for a sign permit within the 30 day period, the application shall be deemed to be approved.
4. **Fees** – The City Council shall establish, and from time to time review, a sign permit fee, which shall be published as part of the sign permit application.

### **913 Signs Prohibited in All Districts**

Except as provided in Section 915, the following are prohibited:

1. All billboards, signs on utility poles, trees, or fences, and all signs not located on the same premises as the advertised activity, business, product, or person.
2. All signs consisting of pennants, ribbons, streamers, spinners, strings of lights unless associated with a specific holiday, revolving beacons or animated skies.
3. No sign shall flash, rotate, or make noise. No sign shall move or give the illusion of moving except for indications of time and temperature or barber poles.
4. No roof signs shall be erected except those roof signs placed at least one foot below the top of the lower slope of a mansard roof.
5. Mobile signs – signs that are placed on a chassis or that are designed to be taken from site to site are not allowed.
6. Portable Signs – Signs on sidewalks that swing freely.

### **914 Signs which Do Not Require a Sign Permit**

1. **Resident Identification Sign** – For single and two family residential uses in any district one identification sign upon a lot identifying the occupants shall not require a sign permit. In the residential districts, one sign identifying any other use which is conducted on the premises and is permitted in the residential districts. All such signs shall not exceed two square feet of display area, and if lit, shall use indirect white light only.
2. **Government Signs** – Signs erected and maintained by the City of Gardner, the Commonwealth of Massachusetts, or the Federal Government on any land, building, or structure used by such agencies.
3. **Temporary Construction Signs** – One temporary construction sign for a new project identifying the building, the owner or intended occupant and the contractor, architect and engineers, which shall not be illuminated nor in excess of 32 square feet of display area. Such signs shall not be erected prior to the issuance of a building permit, and shall be removed within seven days of completion of the construction or issuance of the occupancy permit, whichever comes first.
4. **Fuel Pump Signs** – Fuel pump signs on service station fuel pumps identifying the name or type of fuel and price thereof.

5. **Window Signs** – Window Signs in Commercial or Industrial Districts shall not require a sign permit provided that the aggregate display surface of all signs covers no more than 50% of the window or door on which they are placed. Such signs shall not be illuminated other than by lighting fixtures on the building.
6. **Political Signs and Posters** – Political signs are allowed on private property for a period beginning 30 days before an election. All signs must be removed within seven days following an election. Signs shall be no more than 12 square feet in area.
7. **Real Estate Signs** – Real Estate signs are allowed for a period up to 30 days beyond the closing of a sale. Signs shall be no more than 12 square feet in area.
8. **Product Display** – Displaying products sold on the premises in commercial or industrial districts shall not require a sign permit; provided, however, that all other promotional and pricing information is centrally located on permitted signs and not affixed to the displayed products. No displayed product shall be located on publicly owned land, sidewalks, parking areas or traveled ways.
9. **Public Service Signs** – A sign not exceeding two square feet to recognize a business or non-profit organization performing a service at no cost to the general public; such as beautification of a public way or public building. Public service signs shall only identify the name of the business or non-profit organization performing the service and shall not advertise, identify or promote any product, person, premises, or activity. No public service sign shall be located more than six (6) feet above ground level if mounted on a wall of a building or more than three and one-half feet above the ground if freestanding. Shall be removed within seven (7) days after termination of service.
10. **Temporary, Handwritten Signs** – Signs of this type may not cover more than 20% of window and door areas and are not allowed to remain in place for a period longer than 30 days.
11. **Standing Signs** – One standing sign (“sandwich board”), announcement board, or public information sign, not exceeding 12 square feet, shall be allowed for notices and announcements of services and events. Such signs must be located within the required front yard. No standing sign shall be located on publicly owned land, sidewalks, parking areas or traveled ways.

#### **915 Signs which Require a Temporary Sign Permit**

The following signs and advertising devices shall require a no-charge temporary sign permit. The life of this permit shall be thirty (30) days. One (1) reissuance of a temporary sign permit will be allowed at the discretion of the Building Commissioner.

1. **Public Event Signs** – For an event sponsored by a non-profit organization and open to the public. Shall be removed within five days after the event.
2. **Changeable Letter Signs** – A mobile sign, with or without wheels, upon which the letters and/or lighting can be changed. These shall be allowed only to announce the opening of an event, business, or promotional activity.
3. **Pennants, Banners, Balloons, Flags, and Searchlights** – Such advertising devices shall be allowed only to announce the opening of an event, business, or promotional activity.

#### **916 Signs Permitted in the Commercial or Industrial Districts**

Any principal use permitted in the Commercial or Industrial Districts may erect a sign or signs subject to the following:

1. **Wall Sign or Individual Letter Sign** – A wall sign or individual letter sign shall not exceed four feet in height. A wall sign or individual letter sign on the exterior wall of the first floor of a building shall not

exceed in area two square foot for each lineal foot of the wall or 80 square feet, whichever is less. The length of signs of businesses occupying other than the first floor of a building shall not exceed six feet. No portion of a wall sign or individual letter sign shall project more than one foot from the face of the wall or above the wall of any building. In no case shall a sign project above a parapet wall. A business may divide the entire display area permitted herein into separate wall signs or individual letter signs provided that the maximum height of each separate sign does not exceed the maximum height permitted herein and the sum of the aggregate width and area of each separate sign does not exceed the maximum permitted herein.

2. **Secondary Signs** – If a business has a direct entrance into the business in a wall or other than the front wall, there may be a secondary sign affixed to such wall, and if a business has a wall, other than the front wall, that faces upon a Street or parking area, there may be a secondary sign affixed to such a wall; provided, however, that no business shall have more than two secondary signs in any event. This display area of all secondary signs shall not exceed one square foot for each lineal foot of the walls or 40 square feet, whichever is less.
3. **Directory Signs** – One exterior directory sign listing the name and location of the occupants of the premises may be erected on the exterior wall or pole of a building at each entrance or other appropriate location provided the display area shall not exceed one square foot for each occupant identified on the directory sign.
4. **Directional Signs** – Directional signs may be erected near a street, driveway, or parking area if necessary for the safety and direction of vehicular or pedestrian traffic. The display area of each directional sign shall not exceed two square feet and no directional sign shall be located more than six feet above the ground level if mounted on a wall of a building or more than three and one-half feet above the ground if freestanding. Directional signs shall not advertise, identify, or promote any product, person, premises, or activity but may identify the Street name/number and provide directions.
5. **Free Standing Business Signs** – One free standing business sign which identifies only the name of a business center or a business may be erected on a lot. The display area of a freestanding business sign shall not exceed 50 square feet and the height shall not exceed 15 feet, with a maximum 7’6” clearance above the grade.
6. **Awning signs** – Are permitted, provided sign lettering does not occupy more than 30% of the awning area. Awnings must be placed at a minimum of 7’6” from the surface of the sidewalk.

#### **917 Special Regulations for Signs in Historic Areas**

Signs erected in duly authorized historic districts and signs erected on sites listed on the National Historic Register or the State Register of Historic Places shall comply with the following requirements:

1. Signs shall be designed to complement the historic character of the district or site. No sign shall obscure contributing architectural features of historic structures, including but not limited to cornices, lintels, transoms, windows, and doors.
2. **Wall Sign or Individual Letter Sign** – A wall sign or individual letter sign shall not exceed four feet in height. A wall sign or individual letter sign on the exterior wall of the first floor of a building shall not exceed in area one square foot for each lineal foot of the wall or 40 square feet, whichever is less. The length of signs of businesses occupying other than the first floor of a building shall not exceed six feet. No portion of a wall sign or individual letter sign shall project more than one foot from the face of the wall or above the wall of any building. In no case shall a sign project above a parapet wall. A business may divide the entire display area permitted herein into separate wall signs or individual letter signs provided that the maximum height of each separate sign does not exceed the maximum height permitted

herein and the sum of the aggregate width and area of each separate sign does not exceed the maximum permitted herein.

3. **Secondary Signs** – If a business has a direct entrance into the business in a wall other than the front wall, there may be a secondary sign affixed to such wall, and if a business has a wall, other than the front wall, that faces upon a Street or parking area, there may be a secondary sign affixed to such a wall; provided, however, that no business shall have more than two secondary signs in any event. The display area of all secondary signs shall not exceed one square foot for each two lineal foot of walls or 30 square feet, whichever is less.
4. **Awnings** – Awning signs are permitted, provided sign lettering does not occupy more than twenty (20) percent of the awning area. Awnings must be placed a minimum 7' 6" from the surface of the sidewalk.
5. **Commodity, Trademark Signs** – Such signs are prohibited in historic districts and on historic structures.
6. **Free Standing Business Sign** – One free standing business sign which identifies only the name of a business center or a business may be erected on a lot provided that no other sign(s) permitted under this Ordinance other than directory or directional signs shall be on the same lot. The display area of a free standing business sign shall not exceed 20 square feet and the height shall not exceed 6'6", with a maximum 3'6" clearance above the grade.

#### **918 Nonconforming Signs**

1. **Continuance.** A non-conforming sign, lawfully existing at the time of adoption of or subsequent amendment to this Ordinance, may continue its non-conforming use although such sign does not conform to the provisions of the sign ordinance. Provided however, if such non-conforming sign is expanded, extended, enlarged or relocated in any manner, it must then conform with the provisions of the sign ordinance. Provided further, the exemption provided in this section shall terminate in the event such non-conforming sign:
  - a. shall not have been refaced by a new or subsequent business occupying the premises for a period of one (1) year; or
  - b. shall not have been repaired or made safe within the time frame of a written notice to that effect from the Building Commissioner.
2. **Maintenance.** Any lawfully existing sign may be maintained, repaired, or repainted. No lawfully existing sign shall be expanded, extended, or enlarged in dimension or use unless it conforms with the provisions of the sign ordinance, or the owner of such sign has obtained a lawful variance therefrom.
3. **Replacement.** The face of any legally existing, non-conforming sign, pursuant to the exemption provided by paragraph 1 of this section, may be replaced with a new face, provided however, such replacement shall not expand, extend or enlarge the dimensions of use of such sign or change the location of the existing non-conforming sign. Any sign that replaces a non-conforming sign not exempted by paragraph 1 of this section shall conform to the provisions of the sign ordinance, and such non-conforming sign shall not be displayed on the premises. If a legally existing, non-conforming sign, exempted under paragraph 1 of this section is destroyed by vandalism or other reason beyond the control of the owner or subsequent owner it may be replaced with a sign of the same dimensions and use or restored to its original condition within one year.

**1000 SCHEDULE DEVELOPMENT****1001 Purpose**

The purpose of this Section is to relate the timing of residential development to the City's ability to provide services to such development, and thereby promote the education, health, safety, convenience and welfare of the inhabitants of the City, by regulating the maximum rate at which individual residential developments may proceed.

**1002 Procedure**

1. This Section shall take effect only when and if the Building Commissioner determines that one hundred (100) dwelling units have been authorized city-wide by building permits within a twenty-four (24) month period. Once the Building Commissioner has determined that one hundred (100) dwelling units have been authorized, then the provisions hereof shall apply for the next twenty-four (24) month period (the "Applicable Period"). At the expiration of the Applicable Period, the Building Commissioner shall determine if one hundred (100) dwelling units have been authorized city-wide by building permits issued during the Applicable Period, and if so the provisions hereof shall apply for a second Applicable Period. At the expiration of the Second Applicable Period, the Building Commissioner shall determine if one hundred (100) dwelling units have been authorized city-wide by building permits issued during the Second Applicable Period, and if so the provisions hereof shall apply to a third Applicable Period. At the end of the third Applicable Period, the Building Commissioner shall determine if one hundred (100) dwelling units have been authorized city-wide by building permits issued during the Applicable Period, and if so the provisions hereof shall apply for a fourth Applicable Period. Following the fourth Applicable Period, the Building Commissioner shall make no further determination and the provisions of this section shall no longer apply.
2. While this Section is in effect, the following types of residential development shall be scheduled:
  - a. All subdivisions consisting of 10 or more lots for which preliminary or definitive plans were filed with the Planning Board after May 2, 1988.
  - b. All development consisting of 10 or more units on one or more contiguous parcels which were under the same ownership at any time after May 2, 1988.
3. A written development schedule shall be submitted to the Planning Board. Planning Board approval of a development schedule shall provide that:
  - a. The schedule designates for building not more than eight (8) units or 30 percent of the potential dwelling units in the subdivision, whichever is greater, within the first two years (24 months) following definitive plan endorsement or issuance of a Special Permit by the Zoning Board of Appeals;
  - b. In each year thereafter, the schedule permits construction of not more than eight (8) units or 15 percent of the total number of potential dwelling units in the subdivision, whichever is greater;
  - c. In the opinion of the Planning Board, the development sequence established by the schedule is not arbitrary or unreasonable; and

- d. In the opinion of the Planning Board, the development schedule will not place an unreasonable burden on the City's services and infrastructure.
4. While this Section is in effect, the Building Commissioner shall issue building permits for construction of new dwelling units in a scheduled development only if the permit issuance will not result in authorizing construction within a twenty-four (24) month period of more than eight (8) units or 30 percents of the units potentially allowed in each development, whichever is greater.
5. The Planning Board will have the discretion to require that the length of roadway within a schedule development plan correspond to the drainage and infrastructure services.
6. All plans must indicate adjacent individual property owners on the plan including individual owners in trust, corporations, etc.

### **1003 Exemptions**

1. All units which are considered affordable per State regulations.
2. Conversions of buildings prior to 1938 and conversions of the buildings that have fallen into disuse or disrepair, as determined by the Planning Board, shall be exempt from this Ordinance.
3. All units located in General Residential 3 and Commercial 1 Zoning Districts.
4. All units located in a Development Overlay District (Section 530).
5. All development subject to the "In-Fill" development provision of this Ordinance (Section 630).
6. All Smart Growth PUDs (Section 540).
7. All Industrial and Commercial Heritage PUDs (Section 550).

## **1010 SITE PLAN REVIEW**

### **1011 Purpose**

The purpose of this section is to protect the health, safety, convenience and general welfare of the inhabitants of the City of Gardner by providing for a review of plans for uses and structures which may have significant impacts on traffic, municipal buildings and public services and utilities, environmental and design quality, community economics and community values in the City.

### **1012 Applicability**

The Site Plan Review and approval provisions of this section shall apply to the following types of structures and uses (excluding detached single-family and two-family dwellings):

- a. Any new structure or group of new structures under the same ownership on the same or contiguous lots, that consist of 5,000 square feet or more of gross floor area;
- b. Any improvement, alteration or change in use which results in an increase of 2,500 square feet or more of gross floor area;
- c. Requires an addition of 30 or more new parking spaces under the requirements of this Ordinance; and
- d. Any improvement, alteration, change in use or new structure or group of new structures under the same ownership on the same lot or contiguous lots which is expected to generate, in the opinion of the Planning Board, 500 or more vehicle trips per weekday.
- e. All adult uses

- f. All development in the Development Overlay District over 2,500 s.f.
- g. All development proposed under the Smart Growth PUD.
- h. All developments proposed under the Industrial and Commercial Heritage PUD.

### **1013 Basic Requirements**

- 1. Notwithstanding anything contained in this Ordinance to the contrary, no person shall undertake, any use or improvement subject to this section, unless a Site Plan Review approval has been issued by the Planning Board for the proposed development in accordance with requirements of this section.
- 2. The Building Commissioner shall have the authority to enforce compliance with this provision and with the site plan resulting from this process.
- 3. The Planning Board may waive specific submission requirements of a Site Plan Review upon demonstration by the applicant that a requirement is not necessary or inapplicable to the applicant's project.

### **1014 Application and Review Procedure**

The following describes the process through which a Site Plan Review will be undertaken. In all cases, an application shall not be accepted nor considered officially submitted until all requirements of the application have been met. For a Definitive Plan, a written determination of completeness of the application shall be made by the Department of Community Development and Planning (DCDP) within five (5) working days of the time the application is presented to the Department. The date of determination of completeness shall be the formal date of submission.

#### **1. Step One: Preparation of Preliminary Development Plan**

The applicant shall first submit ten (10) copies of a preliminary plan to the Director of Community Development and Planning. The intent of this submittal is to permit a full understanding of the plan and implementation approaches before detailed design and planning occurs. The applicant is required to submit ten (10) copies of the following to the Director of Community Development and Planning (DCDP):

- a. A graphic and written description of the conceptual plan for site and building use improvements and functional/visual character.
- b. A tentative diagrammatic plan of property subdivision to include identification of public/private access ways and services and open spaces.
- c. A description of the potential impacts upon the environment and the neighborhood and, as appropriate, identification of mitigating solutions.
- d. A summary of proposed uses and phasing parameters.

#### **2. Step Two: The Preliminary Plan Conference**

The information submitted to the DCDP will be distributed to the Development Review Committee, relevant agencies, and consultants for review. Within fifteen working days, a preliminary plan conference will be held with both the applicant's representative and public staff present. Additional meetings, as required, may be called. The purpose of the meeting will be to obtain an explanation of the proposed project, to gain substantive reactions from the public representatives, and to determine agreement on detailed approaches and submittal requirements for the Definitive Development Plan. A report of the findings of the conference will be prepared by the public representatives and submitted to the applicant.

This report will confirm the specific requirements for the Project application, and will normally occur within ten working days.

### 3. Step Three: The Definitive Development Plan

- a. The approved product of this phase is ten (10) copies of both a final subdivision plan and/or comprehensive design master plan, implementation strategy and program. The subdivision plan aspect will be satisfied by formal submittal of drawings and data in accordance with rules specified in the current Subdivision Rules and Regulations.

The design master plan description must be in sufficient detail that construction could be completed without major adjustments. Schematic design and engineering drawings of professional quality will be submitted; narrative and outlined specifications of design and construction standards will usually be required. Depending on the environmental and economic significance of the site and project, landscaping and exterior architectural treatments may be required for presentation in rendered site plans, building elevations, and site/building cross sections.

If required by the DCDP, submittals concerning environmental, traffic, fiscal and neighborhood impacts will be presented (as per Section 1015) as well as final summary of project implementation and phasing strategy.

Immediately after receipt of this submittal, portions will be circulated to relevant agencies (and consultants), followed by a review conference. To the extent that individual portions must be modified to achieve staff endorsement, additional applicant work time, and smaller review meetings may be called.

Upon achieving staff approval and agreement, an acceptable performance guarantee will be posted to secure the applicant's completion of proposed site improvements.

Responsible staff heads will then prepare a summary of departmental comments/endorsements and assist the applicant to route all related materials to the Planning Board via the City Clerk.

The Planning Board shall schedule a public hearing and initiate internal Board review at the earliest convenient date.

- b. The Planning Board shall hold a public review meeting on any properly completed application within 35 days after the date of submission of the Definitive Plan. Said meeting shall be advertised by at least one printing in a local newspaper.
- c. In reviewing the impacts of a proposed development, the Planning Board shall consider the information presented in the application for Site Plan Review; all reports of City Departments submitted to the Planning Board; and any additional information available to the Planning Board, submitted to the Planning Board by any person, official or agency or acquired by the Planning Board on its own initiative or research.
- d. The Planning Board shall have 90 days from the date of Definitive Plan submission in which to approve or not approve the Site Plan. Additional review time may be established at the request of the developer.

### **1015 Contents and Scope of Applications**

An application for a Site Plan Review under this section shall be prepared by qualified professionals, including a Registered Professional Engineer, a Registered Architect and/or Registered Landscape Architect, and shall include the following items and information:

#### Requirements for a Site Plan Review Application.



- a. A site plan at a scale of one inch equals twenty feet (1" = 20') or such other scale as may be approved by the Planning staff, indicating water service, sewer, waste disposal, and other public utilities on and adjacent to the site. For convenience and clarity, this formation may be shown on one or more separate drawings.
- b. A landscape plan at the same scale as the site plan, showing the limits of work, existing tree lines, and all proposed landscape features and improvements including planning areas.
- c. An isometric line drawing (projection) at the same scale as the site plan, showing the entire project and its relation to existing areas, buildings and roads for a distance of 100 feet from the project boundaries.
- d. A locus plan at a scale of one inch equals 100 feet (1" = 100') showing the entire project and its relation to existing areas, buildings and roads for a distance of 1,000 feet from the project boundaries, or such other distance as may be approved or required by the Planning Board.
- e. Building elevation plans at a scale of one-quarter inch equals one foot (1/4"=1'0") or one half inch equals one foot (1/2"=1'0") showing all elevations of all proposed buildings and structures and indicating the type and color of materials to be used on all façades.
- f. A citywide location map on mylar at one inch equals 1,000 feet (1"=1,000') showing the property lines of the project, city boundaries, major streets, or other factors as may be deemed relevant for the Planning Board to analyze the project within the scope of the Master Plan.
- g. In cases where the DCDP or Planning Board determines there is significant impact upon the community, a Development Impact statement is required. This statement shall describe potential impacts of the proposed development, compare them to the impacts of uses which are or can be made of the site without a requirement for Site Plan Review, identify all significant positive or adverse impacts, and propose an acceptable program to prevent or mitigate adverse impacts. The DCDP, at its discretion and based on a preliminary assessment of the scale and type of development proposed, may waive or modify the requirements for submission of any of the elements of the development impact assessment listed in this paragraph (g). Such waiver shall be issued in writing with supporting reasons. The Development Impact Statement may be issued in writing with supporting reasons. The Development Impact statement may consist of any and all of the following four elements:

1. Traffic Impact Assessment.

- a. Purpose. To document existing traffic conditions in the vicinity of the proposed project, to describe the volume and effect of projected traffic generated by the proposed project, and to identify measures proposed to mitigate any adverse impacts on traffic.
- b. Format and Scope:
  - i. Existing traffic conditions: Average daily and peak hour volumes, average and peak speeds, sight distances, accident data, and levels of service (LOS) of intersections and streets likely to be affected by the proposed development. Generally, such data shall be presented for all streets and intersections adjacent to or within 1,000 feet of the projected boundaries.
  - ii. Projected traffic conditions for design year of occupancy: Statement of design year of occupancy, background traffic growth on an annual average basis, impacts of proposed developments which have already been approved in part, or in whole by the City.
  - iii. Projected impact of proposed development: Projected peak hour and daily traffic generated by the development of roads and ways in the vicinity of the development;

sight lines at the intersections of the proposed driveways and streets; existing and proposed traffic controls in the vicinity of the proposed development; and projected post-development traffic volumes and levels of service of intersections and streets likely to be affected by the proposed development [as defined in (i)].

2. Environmental Impact Assessment.

- a. Purpose: To describe the impacts of the proposed development with respect to on-site environmental quality.
- b. Format and Scope:
  - i. Identification of potential impacts: Description of evaluation of potential impacts on the quality of air, surface water, and ground water adjacent to or directly affected by the proposed development; on-site or off-site flooding, erosion and/or sedimentation resulting from alterations to the project site, including grading changes and increases in impervious areas; on-site or off-site hazards from radiological emissions or other hazardous materials, adverse impacts on temperature and wind conditions on the site and adjacent properties; impacts on solar access or adjacent properties; and off-site noise or light impacts.
  - ii. Systems capacity: Evaluation of the adequacy of existing or proposed systems and services for water supply, sewage, storm drainage and solid waste disposal.
  - iii. Proposed mitigation measures: Description of proposed measures for mitigation of any potential adverse impacts identified above.

3. Fiscal Impact Assessment.

- a. Purpose: To evaluate the fiscal and economic impacts of the proposed development on the City.
- b. Format and Scope:
  - i. Projections of costs arising from increased demands for public services and infrastructure.
  - ii. Projections of benefits from increased tax revenues, employment (construction and permanent), and value of public infrastructure to be provided.
  - iii. Projections of the impacts of the proposed development on the values of adjoining properties.
  - iv. Five-year, seven-year and ten-year projections of increased City revenues and costs resulting from the proposed development.

4. Community Impact Assessment.

- a. Purpose: To evaluate the City's impact of the proposed development with respect to the City's visual and historic character and development goals.
- b. Format and Scope:
  - i. Site design and neighborhood impact: Evaluation of the relationship of the proposed new structures or alterations to nearby pre-existing structures in terms of character and intensity of use (e.g. scale, materials, color, door and window size and locations, setbacks, roof and cornice lines, and other major design elements); and of the location and configuration of proposed structures, parking areas, and open spaces with respect to neighboring properties.

- ii. Historic impact: Identification of impacts on significant historic properties, districts or areas, or archaeological resources (if any) in the vicinity of the proposed development.

### **1016 Development Impact Standards**

The following standards shall be used in evaluating projected impacts of all “Major Projects” and for Small Projects when relevant. “Required” standards must be met by all developments subject to this section. “Recommended” standards are set for as guidelines to both the Planning Board and applicants, and are not intended to be inflexible requirements nor to discourage creativity and innovation.

#### **a. Traffic Impact Standards.**

##### **1. Required:**

The “level of service” (LOS) of all impacted intersections and streets shall be adequate following project development. For purposes of this standard:

- i. “Level of Service” (LOS) shall be determined according to criteria set forth by the Transportation Research Board of the National Research Council;
- ii. “Impacted” means located within 1,000 feet of the closest boundary of the project to receive at least five percent (5%) of the anticipated average daily or peak hour traffic generated by the proposed development; and
- iii. “Adequate” shall mean a level of service of ‘B’ or better for rural, scenic and residential streets and for all new streets and intersections to be created in connection with the project and ‘D’ or better for all other streets and intersections to the extent feasible; and
- iv. The Planning Board shall not deny a project if the LOS of a ‘D’ or worse is not caused by the proposed development, but shall apply conditions that lessen the impact of the project on the LOS to the extent feasible.

##### **2. Recommended:**

The proposed site plan shall minimize points of traffic conflict, both pedestrian and vehicular. The following guidelines shall be used to achieve this standard:

- i. Entrance and exit driveways shall be so located and designed as to achieve maximum practicable distance from existing and proposed access connections from adjacent properties.
- ii. Where possible, driveways shall be located opposite similar driveways.
- iii. Sharing of access driveways by adjoining properties and uses is encouraged.
- iv. Left-hand turns and other turning movements shall be minimized.
- v. Driveways shall be so located and designed as to discourage the routing of vehicular traffic to and through residential streets.
- vi. Pedestrian and bicycle circulation shall be separated from motor vehicle circulation as far as practicable.

#### **b. Environmental Impact Standards:**

##### **1. Required:**

- i. The proposed development shall not create any significant emission of noise, dust, fumes, noxious gases, radiation, or water pollutants, or any other similar significant adverse environmental impact.

- ii. The proposed development shall not increase the potential for erosion, flooding, or sedimentation, either on-site or on neighboring properties; and shall not increase rates of runoff from the site to the satisfaction of the City Engineer and Department of Public Works. Provision for attenuation of runoff pollutants and for groundwater recharge shall be included in the proposal.
- iii. The design of the proposed development shall minimize the destruction of unique natural features.
- iv. The location and configuration of proposed structures, parking areas and open space shall be designed so as to minimize any adverse impact on temperature levels or wind velocities on the site or adjoining properties.
- v. Outdoor lighting, including lighting on the exterior of a building or lighting in parking areas, shall be arranged to minimize glare and light spillover to neighboring properties.
- vi. All unbroken yard space not less than 10 feet in depth shall be established all along the entire perimeter of the lot on which a multifamily building is located. Such yard space shall be planted and maintained by the Multifamily owner. In such yard space, there shall be no off-street parking nor driveway except a driveway crossing that part of such yard space as is bordered by a Street.
- vii. Any multifamily building constructed near a municipal boundary must be protected by a buffer zone from an incompatible use in adjacent land in the neighboring municipality. A 100 foot natural or landscaped buffer zone shall be constructed and maintained by the multifamily building owner if the land in the neighboring municipality is used or zoned for commercial or industrial purposes.

The buffer zone must function as a physical barrier to suitably minimize noise and to provide a visual screen adjacent commercial and/or industrial zones. It may consist of existing or natural vegetation, selective planting, earth berms, fences, or a combination of these arranged in a manner to enhance the aesthetic value of the area.

2. Recommended:

- i. Proposed structures and existing structures adjoining the project shall be free from shadows created by the proposed development from 9:00 a.m. to 3:00 p.m. on December 21. Proposed development within the Central Business District shall be exempt from this standard.
- ii. All outdoor lighting shall be designed and located so that a line drawn from the height of the luminaire along the angle of cutoff intersects the ground at a point within a development site; except that this requirement shall not apply to:
  - iii. low-level intensity pedestrian lighting with a height of less than ten feet, or
  - iv. security lighting directed off the wall of a principal structure.

c. Fiscal Impact Standards:

- 1. Required: None.
- 2. Recommended: Projected positive net fiscal flow of first five years after design year of occupancy.

d. Community Impact Standards:

- 1. Required:
  - i. Design elements shall be compatible with the character and scale of neighboring properties and structures. Buildings should have human scale architectural features and patterns. The elements should be integral parts of the building fabric, and not superficially applied trim or graphics, or paint. Façades visible from a public way should be articulated or use other techniques to reduce the massive scale and the uniform appearances of large retail buildings.

- ii. Variations in roof lines and roof features should be used to add variety to, and reduce the massive scale of, large buildings.
- iii. Exterior building materials and colors should complement materials and colors used in adjoining neighborhoods
- iv. Large retail buildings should feature multiple entrances. Multiple building entrances break up large walls, reduce walking distances from cars, facilitate pedestrian and bicycle access from public sidewalks, and provide convenience where certain entrances offer access to individual stores, or identified departments of a store. Entryway design elements and variations should give orientation and definition to the building.
- v. The design of the development shall minimize the visibility of visually degrading elements such as trash collectors, loading docks, etc.
- vi. The design of the development shall be consistent or compatible with existing local plans, including plan elements adopted by the Planning Board, Conservation Commission, and other city bodies having such jurisdiction.
- vii. The design of the development shall minimize the area over which existing vegetation is to be removed. The removal shall be minimized and, if established trees are to be removed, special attention shall be given to the planting of replacement trees.

## 2. Recommended:

### **i. Façades and Exterior Walls and Details:**

- 1. Building façades must include a repeating pattern that shall include color change, texture change, and materials change. At least one of these elements shall repeat horizontally. All elements shall repeat at intervals of no more than thirty (30) feet, either horizontally or vertically. Patterns can include architectural or structural bays through a change in plane no less than 12 inches in width, such as an offset, reveal, or projecting rib.
- 2. Façades visible from a public way greater than 100 feet in length, measured horizontally, shall incorporate wall plane projections or recesses having a depth of at least 3% of the length of the façade so that no uninterrupted façade shall exceed 100 horizontal feet; or incorporate other types of articulation, façades, displays, or texture which meets the above standard without forcing structural changes to the core “big box.”
- 3. Ground floor façades that face public streets shall have arcades, display windows, entry areas, awnings, or other such features along no less than 60 percent of their horizontal length.

### **ii. Roofs:** Roofs shall have no less than two of the following features:

- 1. Parapets concealing flat roofs and rooftop equipment such as HVAC units from public view. The average height of such parapets shall not exceed 15% of the height of the supporting wall and such parapets shall not at any point exceed one-third of the height of the supporting wall. Such parapets shall feature three dimensional cornice treatment.
- 2. Overhanging eaves, extending no less than 3 feet past the supporting walls.

### **iii. Materials and Colors:** Predominant exterior building materials shall be high quality materials and include, but not be limited to, brick, wood, sandstone, native stone, tinted, textured, and concrete masonry units. Façade colors shall be low reflectance, neutral or earth tone colors. Building trim and accent areas may feature brighter colors, including primary colors.

- iv. **Entrances and Entryways:** The sides of a principal building that face an abutting public street or large parking lot should have at least one customer entrance or a pedestrian arcade that brings pedestrians around the building to the entrance.

Each principal building and each store within a building must have at least one clearly defined, highly visible customer entrance, featuring no less than three of the following: Canopies or porticos, overhangs, recesses/projections, arcades, raised corniced parapets over the door, peaked roof forms, arches, outdoor patios, display windows, architectural details which are integrated into the building structure (such as tile work and moldings), or integral planters or wing walls that incorporate landscaped areas and/or places for sitting.

- v. **Outdoor Storage, Trash Collection, and Loading Areas:** Appropriate locations for loading and outdoor storage areas include areas between buildings, where more than one building is located on a site and such buildings are not more than 40 feet apart, or on those sides of buildings that do not have customer entrances. Areas for outdoor storage, truck parking, trash collection or compaction, loading, or other such uses shall not be visible from abutting streets. No areas for outdoor storage, trash collection or compaction, loading, or other such uses shall be located within 20 feet of any public street, public sidewalk, or internal pedestrian way. Loading docks, truck parking, outdoor storage, utility meters, HVAC equipment, trash collection, trash compaction, and other service functions shall be incorporated into the overall design of the building and the landscaping so that the visual and acoustic impacts of these functions are fully contained and out of view from adjacent properties and public streets, and no attention is attracted to the functions by the use of screening materials that are different from or inferior to the principal materials of the building and landscape. Non-enclosed areas for the storage and sale of seasonal inventory shall be permanently defined and screened with walls and/or fences.
- vi. **Pedestrian Flows:** Standard: Sidewalks and internal pedestrian circulation systems should provide user-friendly pedestrian access as well as pedestrian safety, shelter, and convenience. Sidewalks at least 5 feet in width shall be provided along all sides of the lot that abut a public street. Continuous internal pedestrian walkways, no less than 5 feet in width, shall be provided from the public sidewalk or right-of-way to the principal customer entrance of all principal buildings on the site. At a minimum, walkways shall connect focal points of pedestrian activity such as, but not limited to, transit stops, street crossings, building and store entry points, and shall feature adjoining landscaped areas that include trees, shrubs, benches, flower beds, ground covers, or other such materials for no less than 50 percent of its length. All internal pedestrian walkways shall be distinguished from driving surfaces through the use of durable, low maintenance surface materials such as pavers, bricks, or scored concrete to enhance pedestrian safety and comfort, as well as the attractiveness of the walkways.
- vii. **Delivery/Loading:** Delivery and loading operations should not disturb adjoining neighborhoods, or other uses. No delivery, loading, trash removal or compaction, or other such operations shall be permitted between the hours of 10:00 p.m. and 7:00 a.m. unless the applicant submits evidence that sound barriers between all areas for such operations effectively reduce noise emissions to that which will not disturb adjoining residential uses or residentially zoned areas.

### **1017 Specific Findings Required**

Prior to granting approval or disapproval of the Site Plan Review application, the Planning Board shall make written findings with supporting documentation as specified below.

- a. Approval.

The Planning Board may recommend approval of an application, based on its review of the projected development impacts and the proposed methods of mitigating such impacts, if it finds that the proposed development is in conformance with this Ordinance, and that:

1. The traffic carrying capacity of the intersections and streets likely to be affected by the proposed development will meet the standards set forth in Section 1016.a.
2. The proposed development will comply with the environmental impact standards set forth in Section 1016.b.
3. The planned capacities of public facilities such as water supply, sewage and drainage systems are adequate in the vicinity of the site to serve the proposed development.
4. The proposed development will comply with the community impact standards set forth in Section 1016.d.

Such findings shall pertain to the entire proposed development, including any site plan or design modifications requested by the Planning Board as a condition of its approval, and any off-site improvements proposed by the applicant or required by the Planning Board as condition of its approval.

b. Disapproval.

1. The Planning Board may disapprove an application where it determines that the site plan fails to furnish adequate information on various considerations imposed by this Section 1010 as conditions of approval of the plan.
2. Notwithstanding the above, the Planning Board may approve an application if the adverse impacts of the proposed development are not significantly greater than the impacts of uses which are or can be made of the site under existing laws and regulations without a requirement for a site plan review.

**1018 Conditions, Limitations and Safeguards**

In granting approval of an application, the Planning Board may impose conditions, limitations and safeguards which shall be in writing and shall be part of such approval. Such conditions may include, among other matters and subjects:

- a. Controls on the location and type of access to the site;
- b. Controls on the number of vehicles that arrive or depart during the morning and/or evening peak hours (including controls on the maximum number of vehicles which may use the off-street parking areas during said periods);
- c. Requirements for off-site improvements to improve the capacity and safety of roads, intersections, pedestrian ways, water and sewer, drainage and other public facilities which are likely to be affected by the proposed development;
- d. Requirements for donation and/or dedication of land for right-of-way to provide for future roadway and/or intersection widenings or improvements;
- e. Requirements for securing and performance of all proposed work, including proposed improvements, by either or both of the following methods:
  1. A performance bond, a deposit of money, letter of credit acceptable to the City Treasurer, or bank passbook in an amount determined by the Planning Board to be sufficient to cover the cost of all or any part of the improvements required as conditions of approval. In all such cases, the Planning Board will not accept any form of security that has an expiration date, unless provisions are made to guarantee the City's performance security beyond the date of expiration.

2. A covenant running with the land, executed and duly recorded by the owner of record, whereby the required improvements shall be completed before the property may be conveyed by other than a mortgage deed.
- f. Conditions to minimize off-site impacts on traffic and environmental quality during construction.

### **1019 Administration**

- a. The Planning Board shall establish and may periodically amend rules and regulations relating to the administration of this section, including additional regulations relating to the scope and format of reports required hereunder.
- b. The Planning Board shall establish and may periodically amend a schedule of fees for all applications under this section. No application shall be considered completed unless accompanied by the required fees.
- c. The Planning Board shall be responsible for deciding the meaning or intent of any provision of this section which may be unclear or in dispute.

## **1020 ADULT USES**

### **1021 Purpose and Intent**

In the development and execution of this Section, it is recognized that there are some uses which, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to insure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized within this Section. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area (i.e., not more than 2 such uses within 750 feet of each other which would create such adverse effects).

### **1022 Definitions**

A. Adult Uses: An establishment, a building or portion thereof, or a use of land having a substantial or significant portion of its business activity, stock in trade, or other matter or materials for sale, rental, distribution, or exhibition, which are distinguished or characterized by their emphasis on depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L. c.272 s.31, including but not limited to the following:

1. Adult Bookstore: An establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other matter which are distinguished or characterized by their emphasis depicting, describing or relating to “sexual conduct” or “sexual excitement” as defined in M.G.L. c.272 s.31.
2. Adult Club: An establishment having as a substantial or significant portion of its activities or entertainment a person or persons performing in a state of nudity or distinguished by an emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement, as defined in M.G.L. c.272 s.31.
3. Adult Entertainment Establishment: An establishment offering activities or goods or providing services where employees, entertainers or patrons are engaging in nudity, sexual conduct or sexual excitement as defined in Section 31 of Chapter 272 of the General Laws.
4. Adult Motion Picture Theater: An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L. c.272 s.31.



5. Adult Paraphernalia Store: An establishment having as a substantial or significant portion of its stock devices, objects, tools or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in M.G.L. c.272 s.31.
6. Adult Video Store: An establishment having as a substantial or significant portion of its stock in trade videos, movies or other film materials which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement, as defined in M.G.L. c.272 s.31.
7. Body Art Establishment: Any location, place or business where the practice of tattooing is performed.

**B. Substantial or Significant Portion:** The term “substantial or significant portion” as used herein shall mean any of the following:

1. Twenty percent (20%) or more of the business inventory or stock of merchandise for sale, rental, distribution, or exhibition during any period of time.
2. Twenty percent (20%) or more of the annual number of gross sales, rentals, or other business transactions.
3. Twenty percent (20%) or more of the annual gross business revenue.
4. Twenty percent (20%) or more of the hours during which the establishment is open.

### **1023 Special Permit**

Adult Uses shall be permitted only in Industrial 2 districts with a Special Permit granted by the Zoning Board of Appeals (ZBA) as set forth herein.

A. Conditions: No adult use establishment shall be within:

1. Seven hundred fifty (750) feet of a boundary line of a residential zoning district.
2. Seven hundred fifty (750) feet of a lot line of any lot containing a non-conforming residential dwelling that has not been abandoned or unoccupied for a period of two (2) years.
3. Seven hundred fifty (750) feet of a lot line of any lot containing a church, any public school, private kindergarten or school, licensed day-care facility, or any school or college serving a student population where any of the student population is under eighteen years of age.
4. Seven hundred fifty (750) feet of a lot line of any lot containing a park, playground, library, cultural facility, museum, elderly housing, assisted living facility, nursing home, or adult day-care facility.
5. Seven-hundred fifty (750) feet of a lot line of any lot containing an establishment licensed under the provisions of M.G.L. c.138 s.12.
6. Seven-hundred fifty (750) feet of any other presently existing or permitted Adult Use.

B. Additional Special Permit Requirements:

1. If the Adult Use allows for the showing of films or videos within the premises, the booths in which the films or videos are viewed shall not be closed off by curtains, doors, screens, or other view inhibiting devices. All booths must be able to be clearly seen from the center of the establishment.
2. The application for a Special Permit for an Adult Use must include the following information:
  - a. Name and address of the legal owner of the proposed Adult Use establishment;
  - b. Name and address of all persons having any lawful, equitable or secured interest in the Adult Use establishment;

- c. An affidavit must be provided stating that neither the applicant nor any person having a lawful, equitable or secured interest in the Adult Use establishment has been convicted of violating the provisions of Section 63 of Chapter 119 of the General Laws or Section 28 of Chapter 272 of the General Laws;
  - d. Name and address of the manager of the Adult Use establishment;
  - e. Proposed provisions for security within and without the Adult Use establishment;
  - f. The number of employees; and
  - g. The present and proposed physical layout of the interior of the Adult Use establishment.
3. No Special Permit for an Adult Use shall be issued to any person convicted of violating M.G.L. c.119 s.63 or M.G.L. c.272 s.28.
  4. An Adult Use Special Permit shall only be issued following a public hearing held within sixty-five (65) days after the filing of an application with the ZBA.
  5. Any Adult Use Special Permit granted under this Ordinance, pursuant to the provisions of M.G.L. c.40A s.9A, shall lapse within six (6) months of issuance, including the time required to pursue or await the determination of an appeal as allowed under Section 17 of said chapter, if a substantial use thereof has not sooner commenced except for good cause.
  6. Any Adult Use Special Permit issued under this Ordinance shall require that the owner of such adult use supply, in writing to the Building Commissioner, any change in the name of the record owner or address or any change in manager within ten (10) business days. Failure to comply with this provision shall result in the immediate revocation of such Special Permit. If anyone so identified is or is found to be convicted of violating M.G.L. c.119 s.63 or M.G.L. c.272 s.28, such Special Permit shall immediately be null and void.

#### C. Site Development Standards:

Site Plan Review: No Special Permit for any Adult Use shall be issued without Site Plan Approval first having been obtained from the Planning Board, Section 1010 (Site Plan Review) of the Zoning Ordinance. In addition to the standards set forth therein, the Site Plan must include the following:

1. Dimensional Requirements: Any building or structure containing an Adult Use shall meet the setback requirements and other dimensional controls of the appropriate district as specified in the Zoning Ordinance. For any property proposed to contain an Adult Use, the applicant for a Special Permit for such use shall demonstrate that the entire property shall comply with these requirements and controls following the establishment of such use thereon.
2. Parking: On-site parking and loading shall be provided in accordance with the requirements set forth in Section 7 (Parking Standards) of the Zoning Ordinance as pertains to retail stores, clubs, or places of assembly. For any property proposed to contain an Adult Use, the applicant for a Special Permit for such use shall demonstrate that the entire property shall comply with these requirements and controls following the establishment of such use thereon.
3. Landscaping: At a minimum, the property on which an Adult Use is proposed to be located shall contain a landscaped buffer strip along its entire perimeter, except that portion directly abutting a public street, that screens parking areas and other parts of the premises from adjoining properties by walls, fences, plantings or other devices.
4. Signs: All signs for any Adult Use must meet the requirements of Section 9 (Signs and Advertising Devices) of the Zoning Ordinance. In addition, no advertisement, display, or other promotional material

which contains sexually explicit graphics or sexually explicit text shall be visible to the public from any public way including but not limited to sidewalks, pedestrian walkways, highways, or railways.

#### **1024 Body Art Establishments**

Conditions: No Body Art Establishment shall be within:

1. Seven hundred fifty (750) feet of another presently existing or permitted Body Art Establishment.
2. Seven hundred fifty (750) feet of a boundary line of a residential zoning district.
3. Seven hundred fifty (750) feet of a lot line of any lot containing a church, any public school, private kindergarten or school, licensed day-care facility, or any school or college serving a student population where any of the student population is less than eighteen years of age.
4. Seven hundred fifty (750) feet of a lot line of any lot containing a park, playground, library, cultural facility, museum, elderly housing, assisted living facility, nursing home, or adult day-care facility.
5. Seven-hundred fifty (750) feet of a lot line of any lot containing an establishment licensed under the provisions of M.G.L. c.138 s.12 (this is an establishment that is licensed to sell alcohol).
6. Seven-hundred fifty (750) feet of any presently existing or permitted Adult Use.

#### **1030 WIRELESS COMMUNICATIONS FACILITIES**

In addition to the general conditions and procedures established in this Ordinance for all Special Permits, the following additional requirements and procedures shall apply.

#### **1031 Purpose**

The purpose of this section is to establish an Ordinance by which wireless communication may be provided with minimal harm to the public health, safety, and general welfare. Specifically, the Wireless Communications Facilities Ordinance has been created to (a) protect the general public from hazards of structural failure associated with wireless communications facilities and (b) minimize visual impacts from wireless communications facilities on residential districts within the City of Gardner. This section does not apply to satellite dishes and antennas for residential use.

#### **1032 Definitions**

1. Camouflaged – a Wireless Communications Facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure.
2. Carrier – a company that provides wireless services.
3. Co-Location – the use of a single mount on the ground by more than one carrier (vertical co-location) and or several mounts on an existing building or structure by more than one carrier.
4. Equipment Shelter – an enclosed structure, cabinet, shed, or box, at the base of the mount within which are housed batteries and electrical equipment.
5. Fall Zone – the area on the ground within a prescribed radius from the base of a Wireless Communications Facility. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.
6. Guyed Tower – a monopole or lattice tower that is tied to the ground or other surface by diagonal cables.

7. Lattice Tower – a type of mount that is self-supporting with multiple legs and cross-bracing of structural steel.
8. Licensed Carrier – a company authorized by the FCC to construct and operate a commercial mobile radio services system.
9. Monopole – the type of mount that is self-supporting with a single shaft of wood, steel, or concrete and a platform (or racks) for panel antennas arrayed at the top.
10. Mount – the structure or surface upon which antennas are mounted, including the following five (5) types of mounts:
  - a. Roof-mounted: Mounted on the roof of a building.
  - b. Side-mounted: Mounted on the side of a building.
  - c. Ground-mounted: Mounted on the ground.
  - d. Structure-mounted: Mounted on a structure other than a building.
  - e. Interior-mounted: Mounted within a building/structure such that the Wireless Communications Facility is not visible from the exterior of the building/structure.
11. Panel Antenna – a flat surface antenna usually developed in multiples.
12. Radiofrequency Engineer – an engineer specializing in electrical or microwave engineering, especially in the study of radiofrequencies.
13. Security Barrier – a locked, impenetrable wall, fence or berm that completely seals an area from unauthorized entry or trespass.
14. Separation – the distance between one carrier’s array of antennas and another carrier’s array.
15. Wireless Communications – commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services [47 U.S.C. Sec. 332 9c) (7) (C) (i)]. Functionally equivalent services are Cellular, Personal Communications Services (PCS), Enhanced Specialized Mobile Radio, Specialized Mobile Radio and Paging.
16. Wireless Communications – facility for the provision of wireless communications services.

### **1033 Use Restrictions**

- a. When properly camouflaged, side-mounted, roof-mounted, structure-mounted and interior-mounted Wireless Communications Facilities shall require only a building permit.
- b. The co-location of a new Wireless Communications Facility on any existing guyed tower, lattice tower, or monopole shall require only a building permit, provided that the installation of the new Wireless Communications Facility does not increase the height of the existing structure nor the size of the existing secured area at the base of the facility where the equipment cabinet/shelters are located.

#### **1033.1 Location**

- a. The applicant shall submit documentation of the legal right to install and/or use the proposed Wireless Communications Facility mount at the time of application for a building permit and/or Special Permit.
- b. If feasible, Wireless Communications Facilities shall be located on existing structures, including, but not limited to buildings, water towers, existing Wireless Communications Facilities, utility poles

and towers, and related facilities, provided that such installation preserves the character and integrity of those structures. In particular, applicants are urged to consider use of existing telephone and electric utility structures as sites for one or more Wireless Communications Facilities. The applicant shall have the burden of proving that there are no feasible existing structures upon which to locate.

- c. If the applicant demonstrates that it is not feasible to locate on an existing structure, Wireless Communications Facilities shall be designed so as to be camouflaged to the greatest extent possible, including, but not limited to: disguising the facilities to look like other structures (i.e., flagpoles, trees, etc.), the use of compatible building materials and colors, screening, landscaping, and placement within clusters of trees.

### **1033.2 Dimensional Requirements**

Wireless Communications Facilities shall comply with the following requirements:

- a. Height, Roof-Mounted Facilities: Roof-mounted Wireless Communications Facilities shall not project more than ten (10) feet above the height of the existing building upon which the Wireless Communications Facilities is proposed to be located. Said Wireless Communications Facilities may locate on a building that is legally non-conforming with respect to height, providing that the Wireless Communications Facilities do not project more than ten (10) feet above the existing building height.
- b. Height, Structure-Mounted Facilities: Structure-mounted Wireless Communications Facilities shall not project more than ten (10) feet above the height of the existing structure upon which the Wireless Communications Facilities is proposed to be located. Said Wireless Communications Facilities may locate on a structure that is legally non-conforming with respect to height, providing that the Wireless Communications Facilities do not project more than ten (10) feet above the existing structure height.
- c. Height, Side-Mounted Facilities: Side-mounted Wireless Communications Facilities shall not project above the height of the existing building or structure upon which the Wireless Communications Facilities is proposed to be located. Said Wireless Communications Facilities may locate on a building or structure that is legally non-conforming with respect to height, providing that the Wireless Communications Facilities do not project more than ten (10) feet above the existing building or structure height.
- d. Height, Interior-Mounted Facilities: Interior-mounted Wireless Communications Facilities shall not exceed the height of the building or structure upon which the Wireless Communications Facilities is proposed to be located and shall be completely camouflaged such as within a flagpole, steeple, chimney or similar structure.
- e. Height, Ground-Mounted Facilities: Ground-mounted Wireless Communications Facilities shall not exceed the height of one hundred and ninety (190) feet. The Zoning Board of Appeals shall have the authority to reduce the height of a proposed ground-mounted Wireless Communications Facilities.
- f. Setbacks: All Wireless Communications Facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the Wireless Communications Facilities are located.
- g. Fall Zone: In order to ensure public safety, the minimum distance from the base of any ground-mounted Wireless Communications Facility to any property line, road, habitable dwelling, business or institutional use, or public recreational area shall be the height of the Wireless Communications Facility including any antennas or other appurtenances.

### **1034 Special Permit Regulations**

All Wireless Communications Facilities shall comply with the following Performance Standards set forth in this section:

#### **1. Design Standards**

Visibility/Camouflage: Wireless Communications Facilities shall be camouflaged as follows:

##### **a. Camouflage by Existing Buildings:**

- i. When a Wireless Communications Facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal the Wireless Communications Facilities within or behind existing architectural features to limit its visibility from adjoining ways. Wireless Communications Facilities mounted on a roof shall be stepped back from the front façade to limit their impact on the building's silhouette.
- ii. Wireless Communications Facilities that are side-mounted shall blend with the architecture of the existing building and shall be painted or shielded with material that is consistent with the design features and materials of the building.

##### **b. Camouflage by Vegetation:** All ground-mounted Wireless Communications Facilities and equipment shelters shall be surrounded by buffers of tree growth and understory vegetation in all directions to create an effective visual buffer at the street level. Ground-mounted Wireless Communications Facilities shall provide a vegetated buffer of sufficient height and depth to effectively screen the Wireless Communications Facilities at the street level. Trees and vegetation may be existing on the subject property or installed as part of the proposed Wireless Communications Facilities or a combination of both. The Zoning Board of Appeals shall determine the types of trees and plant materials, depth, and overall appropriate design of the needed buffer on site conditions.

##### **c. Color:**

- i. Wireless Communications Facilities that are side-mounted on buildings shall be painted or constructed of materials to match the color of the building material directly behind them.
- ii. To the extent that any Wireless Communications Facility extends above the height of the vegetation immediately surrounding it, it shall be appropriately camouflaged.

#### **2. Equipment Shelters**

Equipment shelters for Wireless Communications Facilities shall be designed consistent with one of the following design standards:

- a. Equipment shelters shall be located in underground vaults; or
- b. Equipment shelters shall be designed in accordance with architectural styles and materials reflective of the uses within a three hundred (300) foot radius of the location acceptable to the Zoning Board of Appeals; or
- c. Equipment shelters shall be camouflaged behind an effective year-round landscape buffer, equal to the height of the proposed building, cabinets, or wooden fence. The Zoning Board of Appeals shall determine the style of the fencing and/or landscape buffer that is compatible with the neighborhood.

#### **3. Lighting & Signage**

- a. Wireless Communications Facilities shall be lit only if required by the Federal Aviation Administration. Lighting of equipment structures and any other facilities on site shall be shielded from abutting properties.

- b. Signs shall be limited to a sign identifying the facility, the owner and operator and an emergency telephone number where the owner can be reached on a twenty-four (24) hour basis, a no trespassing sign, a sign displaying the FCC registration number and, any signs required to warn of danger. All signs shall comply with the requirements of the Zoning Ordinance.
- c. All ground-mounted Wireless Communications Facilities shall be surrounded by a security barrier of a design and material acceptable to the Zoning Board of Appeals.

#### **4. Historic Buildings & Districts**

- a. All Wireless Communications Facilities proposed to be located within an historic district or on an historic structure shall be reviewed by the Gardner Historical Commission (GHC). Upon receipt of an application, the Zoning Board of Appeals shall transmit one copy of the application to the GHC. Final action shall not be taken until a report has been received from the GHC or until 35 days have elapsed.
- b. Any Wireless Communications Facilities located on or within an historic structure shall not alter the character-defining features, distinctive construction methods, or original historic materials of the building.
- c. Any alteration made to an historic structure to accommodate a Wireless Communications Facility shall be fully reversible.
- d. Wireless Communications Facilities within an historic district shall be concealed within or behind existing architectural features, or shall be located so that they are not visible from adjoining ways and viewing areas within the district.

#### **5. Environmental Standards**

- a. Wireless Communications Facilities shall be setback from designated wetlands and waterbodies. Conservation Commission review and approval may be necessary.
- b. No hazardous waste shall be discharged on the site of any Wireless Communications Facility.
- c. Stormwater run-off shall be contained on-site or adequately disposed of off-site via connection to an existing stormwater drainage system.

#### **6. Safety Standards**

All equipment proposed for a Wireless Communications Facility shall comply with the Federal Communications Commission Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation (FCC Guidelines) and shall be maintained so as to remain in compliance with such guidelines as they may be amended.

#### **1035 Application Procedures**

- a. The Special Permit Granting Authority for Wireless Communications Facilities shall be the Zoning Board of Appeals.
- b. The Zoning Board of Appeals shall have the authority to hire a consultant to review any proposed Wireless Communications Facilities submission at the expense of the applicant.
- c. Application Filing Requirements: In accordance with this Ordinance, the location of a Wireless Communications Facility will require a Special Permit from the Zoning Board of Appeals. An application for a Special Permit shall be filed in accordance with Section 1180 and shall be accompanied by seven (7) copies of the following information:
  - 1. Before any new Wireless Communications Facility is approved, the applicant must demonstrate that it is not feasible to locate their antenna and facilities on an existing Wireless

- Communications Facility, structure, or building. Before a new Wireless Communications Facility is proposed in a residential district, the applicant must also demonstrate that it is not feasible to locate their antenna and facilities in other districts or on municipal facilities. Such demonstration studies shall include a summary of propagation studies and a plan for any network of facilities.
2. Details of the Wireless Communications Facility, guy wires and anchors (if any), lighting, and all structures located within 300 feet of the Wireless Communications Facility.
  3. Location of alternate sites, if any.
  4. Color photographs, computer simulation or renditions illustrating the proposed Wireless Communications Facility with its antenna and/or panels or dishes and its location. The Zoning Board of Appeals may require additional visual analysis such as, among other items, enhanced landscaping plans and line-of-site drawings.
  5. Within thirty days after filing the application for any new Wireless Communications Facility or extension in height thereto, if requested by the Zoning Board of Appeals, the applicant shall arrange to fly a balloon at the site at the maximum height of the proposed installation. The balloon shall be of size and color that can be seen from every direction for a distance of one (1) mile.
  6. A certification that the applicant possesses all necessary licenses to operate such a facility and has complied with all federal and state requirements to provide the proposed service.
  7. Reports prepared by one or more registered professional engineers, which shall:
    - a. Demonstrate that the Wireless Communications Facility complies with all applicable standards of the Federal and State governments; and
    - b. Describe the capacity of the Wireless Communications Facility including the number and type of transmitting and receiving antennas that it can accommodate and the basis for the calculation of capacity; and
    - c. Demonstrate that the Wireless Communications Facility and site comply with this regulation; and
    - d. Describe the auxiliary power source, if any.
  8. A copy of the FCC registration, FCC license, and FAA opinion letter or registration for the proposed Wireless Communications Facility and applicant.
  9. Applicants proposing to erect facilities on municipally owned land or structures shall provide evidence of contractual authorization from the City of Gardner to conduct wireless communications on municipally owned property.
  10. At the time of the application filing, the applicant shall file an approval letter from the Massachusetts Department of Public Health confirming that the proposed filing meets the requirements of Massachusetts Department of Public Health regulation 105 CMR 122.000 for Wireless Communications Facilities with respect to emissions.

### **1036 Approval**

A Special Permit shall be granted by the Zoning Board of Appeals in accordance with the Massachusetts General Law and Section 1180 of this Ordinance. Any extension of height or replacement of a Wireless Communications Facility shall be subject to a new application or an amendment to the Special Permit.



### **1037 Conditions of Use**

- a. The Wireless Communications Facility and its transmissions shall comply in all respects with the current standards of the American National Standards Institute (ANSI) and the National Council for Radiation Protection (NCRP), whichever are stricter.
- b. All Wireless Communications Facilities shall be operated only at Federal Communications Commission (FCC) designated frequencies and power levels, and the applicant shall provide certification that the allowable frequencies are not deviated from, and power levels will not be exceeded. Certification shall include technical specifications, an explanation of those specifications, and, if necessary, field verification.
- c. All unused Wireless Communications Facilities or parts thereof or accessory facilities and structures which have not been used for one (1) year shall be dismantled and removed at the owner's expense.
- d. All Wireless Communications Facilities shall be maintained in good order and repair. Any paint and finish must be annually maintained and repaired when the blemishes are visible from the property line. Annual inspection and maintenance reports for the Wireless Communications Facilities and site shall be filed with the Building Commissioner and the Zoning Board of Appeals.

#### **1037.1 Performance Guarantees**

- a. Insurance in a reasonable amount determined and approved by the Zoning Board of Appeals after consultation, at the expense of the Applicant with one (1) or more insurance companies shall be in force to cover damage from the structure and other site liabilities. Annual proof of said insurance shall be filed with the Zoning Board of Appeals.
- b. An initial bond shall be posted for annual maintenance for any access road, site, and Wireless Communications Facility in an amount approved by the Zoning Board of Appeals.
- c. The Zoning Board of Appeals may require an additional financial performance guarantee to insure that facilities which have not been used for one year are removed.
- d. Annual certification demonstrating continuing compliance with the standards of the Federal Communications Commission, Federal Aviation Administration, and the American National Standards Institute shall be filed with the Building Commissioner and the Zoning Board of Appeals by the Special Permit holder at the operator's expense.

## **1040 WIND ENERGY CONVERSION SYSTEMS**

### **1041 Definitions**

"Wind Energy Conversions Systems" shall mean a combination of:

1. some form of surface area for capturing the wind;
2. a shaft or gearing (or the like) assembly for converting the rotational power of the attached surface area to an electrically or mechanically utilizable form;
3. a generator or alternator to convert rotational energy into electrical energy (for systems designed for producing electrical power); water;
4. some form of tower or other structure upon which the first three elements are mounted.

### **1042 Construction**

1. Tower construction shall comply in all respects to the Massachusetts Building Code and to any and all Federal or State Requirements pertaining to the erection of towers in the vicinity of airports. Towers will,

in particular, meet all code requirements as to load factor, construction, foundation, grounding and the placement of guy wire. All towers shall have adequate anti-climb devices.

2. In addition, towers shall be subject to regular, biennial inspections by the Building Commissioner, who shall order the dismantling of any tower that fails to meet existing structural safety standards as enumerated in the Massachusetts Building Code.

#### **1043 Setbacks**

1. The placement of wind machine towers on a given parcel of land shall comply in all respects with the Massachusetts Building Code.
2. The wind machine tower shall be set back from every property line by a distance equal to its height as measured to the highest tip of the blades (hereinafter "Fall Area"), except when a Fall Area easement has been obtained from the appropriate abutters, not including any private or public ways or other areas open to public use.
3. In all cases, the installation shall not be erected nearer to any public way or public utility wires (excluding service wires to the windmill owner's dwelling & accessory building) than the total height of the structure.
4. Wind machine owners shall be required to have insurance coverage for their wind machines to cover the liability claims of other parties, and shall furnish proof of such annually to the City Solicitor.

#### **1044 Minimum Blade Height**

The minimum distance between the ground and any protruding blades utilized shall be fifteen (15) feet, as measured at the lowest point of arc of the blades.

#### **1045 Electrical Regulations**

The installation of Wind Turbine Electrical Generators or the like must conform with the following requirements:

1. All installation must conform with the Massachusetts Electrical Code FPR#11.
2. An electrical permit must be obtained from the City prior to a building permit being issued.
3. The City Wire Commissioner must be contacted upon completion of installation for final inspection before device is put to use.

### **1050 FENCES AND HEDGEROW**

Fences dividing property or facing the street shall have the smooth or unclimbable side facing out. At corner, no fence or hedgerow shall be allowed to block vision over two and one half feet above the street grade within an area formed by the intersecting street lines and a straight line joining the points of said street line twenty feet back from their points of intersection. Fencing and hedgerows running perpendicular to sidewalks shall not be allowed to block vision over two and one half feet above the sidewalk grade for a distance of fifteen feet along driveways immediate in location.

### **1060 EARTH MOVING AND ALTERATION**

#### **1061 General**

No person shall remove earth or conduct earth alteration as hereinafter defined from any land not in public use in any part of the city, without first obtaining a Special Permit from the Planning Board after a public hearing, except as provided herein.

## **1062 Definitions**

Earth Moving and Earth Alteration - The term shall include, without limitation, the following activities:

1. Removal, excavation, processing or dredging of soil, sand, gravel or aggregate materials of any kind;
2. Changing of pre-existing drainage characteristics, sedimentation patterns, flow patterns or flood retention characteristics;
3. Dumping, discharging or filling with any material which would degrade water quality;
4. Placing of fill or removal of material which would alter elevation;
5. Driving of piles, erection of additions to buildings or structures of any kind;
6. Placing of obstructions or objects in water;
7. Removal of vegetation from combined total area exceeding ten thousand (10,000) square feet on a single or adjacent lots;
8. Changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water; but specifically excluding the use of de-icing materials and chemicals for roadway maintenance during the winter months;
9. Any activities, changes or work which may cause or tend to contribute to the pollution of any body of water or ground water.

For the purpose of this section more than one contiguous lot under development constitutes a single project.

## **1063 Regulation**

### **1063.1 Filling or Dumping**

1. The placing, filling, or dumping of snow and ice or earth, including soil, loam, sand, gravel, clay, stone, quarried rock, or other subsurface products, except water, is permitted in all districts if such placing, filling or dumping is entirely incidental to:
  - a. The construction of any structure for which a building permit has been issued.
  - b. Utility construction in public and private ways and private property.
  - c. The routine landscaping (not including significant changes in topography) of a lot with one or two family residences thereon by the owner thereof so long as the topography of the parcel in no location exceeds a 15% grade.

Notwithstanding anything herein to the contrary, a Special Permit hereunder shall be obtained in relation to the construction of any subdivision which alters 50 or more acres of land or constructs a new street two or more miles in length.

2. During construction or any of the activities noted above, all disturbed areas of land shall have erosion control in place to prevent damage to adjacent properties. Erosion control methods shall be approved by the Building Commissioner and shall be installed prior to construction. The Building Commissioner or Department of Public Works Director, where applicable, may require certification by a registered professional engineer of erosion control methods prior to the issuance of a building permit.
3. All earth placing, filling or dumping incidental to the activities in Section 1063.1.1 above shall have finished slopes at no greater than two and one half to one (2.5:1) without providing some form of slope protection or retaining walls. Any slope protection method or retaining wall shall receive

approval of the Building Commissioner prior to its installation. The Building Commissioner may require certification by a Registered Professional Engineer of erosion control methods prior to the issuance of a building permit.

### **1063.2 Earth Excavation**

1. The removal of earth, including soil, loam, sand, gravel, clay, stone, quarried rock or other subsurface products except water, is permitted in all districts if such material is entirely incidental to:
  - a. The construction of any structure for which a building permit has been issued.
  - b. Utility construction in public and private ways and private property.
  - c. The routine landscaping (not including significant changes in topography) of a lot with a one or two family residence thereon by the owner thereof, so long as the existing topography of the parcel in no location exceeds a 15% grade.
  - d. The construction of parking lots as approved under Section 7.

Notwithstanding anything herein to the contrary, a Special Permit hereunder shall be obtained in relation to the construction of any subdivision which alters 50 or more acres of land or constructs a new street two or more miles in length.

2. During construction or any of the activities in Section 1063.2.1 above, all disturbed areas of land shall have erosion control in place to prevent damage to adjacent properties. Erosion control methods shall be approved by the Building Commissioner and shall be installed prior to construction. The Building Commissioner may require certification by a registered professional engineer of erosion control methods prior to the issuance of a building permit.
3. All earth placing, filling or dumping incidental to the activities in Section 1063.2.1 above shall have finished slopes at no greater than two and one half to one (2.5:1) without providing some form of slope protection or retaining walls. Any slope protection method or retaining wall shall receive approval of the Building Commissioner prior to its installation. The Building Commissioner may require certification by a Registered Professional Engineer of erosion control methods prior to the issuance of a building permit.

### **1063.3 Stripping, Stockpiling or Transporting**

On site stripping, stockpiling or transporting of topsoil, loam, sand, aggregate, gravel, and other forms of earth is not allowed unless it is incidental to the activities listed in Section 1063.1.1 and Section 1063.2.1 or as provided for in a Special Permit.

### **1064 Criteria**

Before granting any such permit, the Planning Board shall give due consideration to:

1. The location of the place from which it is proposed to remove soil, loam, sand or gravel;
2. The general character of the neighborhood surrounding such location;
3. The effect of the proposed removal or fill in such neighborhoods; for example, the amount of noise, dust and vibration likely to result from the proposed removal, excavation or filling; the extent, depth, height and contour of the location and surrounding neighborhood from which such removal is proposed or to which such fill is proposed; the general safety of the public on the public ways giving access to and in the immediate vicinity of such location; and the use of which such location has been put prior to the application for a permit, and to which it may be put after the expiration of the permit.

### 1065 Conditions

1. As a part of and as set forth in any such permit, the Planning Board may impose such reasonable restrictions and conditions on the exercise of the permit as it deems to be in the public interest including but not limited to the following:
  - a. The duration of time from which the permit may be exercised;
  - b. The extent, depth, height and contour of the area of removal or fill;
  - c. The grade of the slope of the banks of the area of removal or fill and the specification of showing and reinforcement of the banks of any excavation or fill;
  - d. The proximity of such removal or fill to any public way;
  - e. The hours of the day during which such removal or fill may be permitted;
  - f. The hours of the day during which the material may be trucked away from the location of removal or to the location of fill;
  - g. The conditions under which the removal or fill trucks may be operated;
  - h. The replacement of topsoil and the replanting of the area of removal and screening the same from public view.
2. In any event the conditions at a minimum must include the following:
  - a. For **Earth filling and placing or dumping**, the conditions shall include but not be limited to:
    1. Establishment of a time period to complete the filling operations but not more than one year.
    2. Not more than two entrances-exits shall be allowed onto any one street.
    3. At all stages of operation, proper drainage shall be provided to prevent the collection and stagnation of water to prevent harmful effects upon surrounding properties. During construction or filling operations on sites adjacent to or where drainage and runoff will enter any natural stream, pond or culvert connected thereto, a berm will be constructed between the stream or pond and the construction site, with drainage channeled through a settling pool or catch basin or trap silt prior to entering the water body. If, when complete, the site is to be paved, all drainage shall be channeled through an approved catch basin before entering the water body.
    4. During the period of planning, filling, or dumping, all necessary precautions shall be taken as deemed necessary to the Planning Board for the protection of pedestrians and vehicles.
    5. When the placing, filling, or dumping of earth are completed, the area is to be graded so that no finish grade shall be steeper than a slope of two and one half horizontal to one vertical (2.5:1).
    6. A layer of arable topsoil of a quality approved by the Building Commissioner shall be spread over the clean fill to a minimum of four (4) inches in accordance with the approved contour plan. The area shall be seeded with a suitable cover crop and maintained until the area is stabilized and approved by the Building Commissioner
    7. All necessary precautions shall be taken to protect against any damage being done to surrounding land and to ensure that no dangerous conditions are created after completion.
    8. Prior to placing, filling, or dumping of earth, site plans shall be submitted to the Planning Board containing the following:

- i. Existing and proposed contours at intervals of two feet.
  - ii. Estimated volume of earth to be dumped
  - iii. Proposed truck access to the excavation
  - iv. Names of the abutters
  - v. Details of re-grading and re-vegetation of the site at conclusion of operations.
- b. For **Earth Removal**, the conditions shall include but not be limited to:
  - 1. Establishment of a time period to complete the removal operations but not more than one year.
  - 2. Existing topsoil not to be removed from the site until the area from which it was removed has been restored.
  - 3. Not more than two entrances – exits shall be allowed onto any one street.
  - 4. At all states of operation, proper drainage shall be provided to prevent the collection and stagnation of water to prevent harmful effects upon surrounding properties. During construction or soil removal, on sites adjacent to or where drainage and runoff will enter any natural stream, pond or culvert connected thereto, a berm will be constructed between the stream or pond and the construction site with drainage channeled through a settling pool or catch basin to trap silt prior to entering the water body. If, when complete, the site is paved, all drainage shall be channeled through an approved catch basin before entering the water body.
  - 5. During excavation and removal, barricades and/or fences shall be erected as are deemed necessary by the Planning Board for the protection of pedestrians or vehicles.
  - 6. When excavations and removal operations or either of them are completed, the excavated area shall be graded so that no gradients in disturbed earth shall be steeper than a slope two and one half horizontal to one vertical (2.5:1).
  - 7. In restoring the excavated areas, topsoil shall be spread to a depth of four (4) inches and shall be seeded with a suitable cover crop and maintained until the area is stabilized and approved by the Building Commissioner.
  - 8. Prior to any earth excavation, site plans shall be submitted to the Planning Board containing the following:
    - i. Existing and proposed contours at intervals of two feet.
    - ii. Estimated volume of earth to be removed
    - iii. Proposed truck access to the excavation
    - iv. Names of the abutters
    - v. Ground water levels shall be indicated
    - vi. Details of re-grading and re-vegetation of the site at conclusion of operations.

#### **1066 Time Limit**

No permit for removal of material granted by the Planning Board shall be valid for a period in excess of one (1) year from its date of issue, unless an extension thereof has been granted by the Planning Board, which extension

shall not be granted in intervals greater than one (1) year. Any application for extension granted hereunder shall meet all of the requirements of this section.

### **1110 ENFORCEMENT**

The Building Commissioner shall institute and take any and all such action as may be necessary to enforce full compliance with any and all of the provisions of this Ordinance and of permits and variances issued there under, including notification of noncompliance and request for legal action through the City Council to the City Solicitor.

### **1120 REPETITIVE PETITIONS**

No proposed change in this Ordinance which has been unfavorably acted upon by the City shall be considered on its merits by the City Council within two years after the date of such unfavorable action, unless adoption of the proposed change is recommended in the final report of the Planning Board.

### **1130 BUILDING OR USE PERMITS**

This Ordinance shall be administered by the Building Commissioner. Pursuant to the State Building Code, the Building Commissioner may require such plans and specifications as may be necessary to determine compliance with all pertinent laws of the Commonwealth. Buildings, structures or signs may not be erected, substantially altered, moved, or changed in use and land may not be substantially altered or changed in principal use unless in compliance with then-applicable zoning, and after all necessary permits have been received under federal, state, or local law.

### **1140 PENALTY**

The penalty for violation of any provision of this Ordinance, of any of the conditions under which a permit is issued, or of any decision rendered by the Zoning Board of Appeals and/or Special Permit granting authority shall be Three Hundred dollars (\$300.00) for each offense. Each day that each violation continues shall constitute a separate offense.

### **1150 ZONING BOARD OF APPEALS**

#### **1051 Establishment**

There is hereby established a Zoning Board of Appeals of three (3) members to be appointed by the Mayor and confirmed by the City Council, as provided in Chapter 40A of the General Laws. Two (2) associate members shall be appointed in like manner to serve, upon designation by the Chairman of the Board, in case of vacancy, inability to act, or conflict of interest on the part of a member of said Board.

#### **1052 Powers**

The Zoning Board of Appeals shall have and exercise all the powers granted to it by Chapters 40A, 40B, and 41 of the General Laws and by this Ordinance. The Board's powers are as follows:

1. To hear and decide applications for Special Permits. Unless otherwise specified herein, the Zoning Board of Appeals shall serve as the Special Permit granting authority.
2. To hear and decide appeals or petitions for variances from the terms of this Ordinance, with respect to particular land or structures, as set forth in M.G.L. c. 40A, s. 10.
3. The Zoning Board of Appeals may hear and decide petitions for Use Variances from the terms of this Ordinance, with respect to certain uses, in accordance with the standards for Variances as set forth in M.G.L. c. 40A s. 10.



4. To hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of M.G.L. c. 40A, ss. 8 and 15.
5. To hear and decide comprehensive permits for construction of low or moderate income housing by a public agency or limited dividend or nonprofit corporation, as set forth in M.G.L. c. 40B, ss. 20-23.

#### **1053 Regulations**

The Zoning Board of Appeals may adopt rules and regulations for the administration of its powers.

#### **1054 Fees**

The Zoning Board of Appeals may adopt reasonable administrative fees and technical review fees for petitions for variances, administrative appeals, and applications for comprehensive permits.

#### **1160 AMENDMENT**

This Ordinance may be amended from time to time in accordance with the provisions of Chapter 40A of the General Laws.

#### **1170 VALIDITY**

The invalidity of any section or provision of this Ordinance shall not invalidate any other section or provision thereof.

#### **1180 SPECIAL PERMITS**

##### **1181 Special Permit Granting Authority (SPGA)**

Unless specifically designated otherwise, the Zoning Board of Appeals shall act as the Special Permit Granting Authority. The Planning Board is the Special Permit Granting Authority for Infill Development, the Smart Growth PUD, the Industrial and Commercial Heritage PUD, and Open Space Residential Developments. The City Council is the SPGA for the Development Overlay District 1.

##### **1182 Criteria**

Special Permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the city or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this Ordinance, the determination shall include consideration of each of the following:

1. The proposal shall be suitably located in the neighborhood in which it is proposed and/or the entire City, and shall be compatible with neighborhood character, existing uses and other uses permitted by right in the same district;
2. The proposal shall provide convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets, property and improvements;
3. The proposal shall provide adequate space for off-street parking, loading and unloading of vehicles, and goods, products, materials and equipment incidental to the normal operation of the establishment or use;
4. The proposal shall provide adequate and appropriate facilities and utilities for the proper operations of the proposed use and disposal of sewage, refuse or other waste products, and methods of drainage of surface water;
5. The proposal shall not constitute a nuisance due to air and water pollution, erosion, flood, noise, odor, dust, vibrations, lights or visually offensive structures or site features;

6. The proposal shall not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians, as determined by the Special Permit Granting Authority;
7. The proposal shall be in harmony with the general purpose and intent of this ordinance;
8. The proposal shall not have a significant detrimental impact on city services, tax base, and employment opportunities; and
9. The proposal is consistent with the City's Community Development Plan or Master Plan.

#### **1183 Procedures**

An application for a Special Permit shall be filed in accordance with the rules and regulations of the Special Permit Granting Authority.

#### **1184 Conditions**

Special Permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the Special Permit Granting Authority may deem necessary to serve the purposes of this Ordinance.

#### **1185 Regulations**

The Special Permit Granting Authority may adopt rules and regulations for the administration of this section.

#### **1186 Fees**

The Special Permit Granting Authority may adopt reasonable administrative fees and technical review fees for applications for Special Permits.

#### **1187 Lapse**

Special Permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 12 months following the filing of the Special Permit approval (plus such time required to pursue or await the determination of an appeal referred to in M.G.L. c. 40A, s. 17, from the grant thereof) with the City Clerk.

Ordinance No. 470, passed December 9, 1970, upheld at City Election November 4, 1971.

Amended by Ordinances:

#559 - passed June 17, 1974  
#582 - passed February 18, 1975  
#583 - passed February 18, 1975  
#585 - passed March 3, 1975  
#595 - passed July 21, 1975  
#599 - passed October 20, 1975  
#663a- approved July 3, 1978  
#755 - passed September 8, 1981  
#763 - passed January 4, 1982  
#788 - passed August 2, 1982  
#808 - passed March 21, 1983  
#844 - passed August 6, 1984  
#867 - passed August 5, 1985  
#894 - passed August 4, 1986  
#922 - passed April 6, 1987  
#923 - passed May 4, 1987  
#924 - passed May 4, 1987  
#925 - passed May 4, 1987  
#930 - passed August 3, 1987  
#942 - passed November 2, 1987  
#943 - passed November 2, 1987  
#966 - passed May 2, 1988  
#967 - passed May 2, 1988  
#1010 - passed June 5, 1989  
#1011 - passed June 5, 1989  
#1014 - passed June 5, 1989  
#1015 - passed June 5, 1989  
#1088 - passed February 18, 1992  
#1112 - passed December 21, 1992  
#1113 - passed December 21, 1992  
#1122 - passed March 1, 1993  
#1139 - passed November 15, 1993  
#1217 - passed May 6, 1996  
#1230 - passed October 21, 1996  
#1256 - passed December 15, 1997  
#1257 - passed December 15, 1997  
#1286 – passed October 19, 1998  
#1287 – passed October 19, 1998  
#1305 – passed June 21, 1999  
#1333 – passed August 7, 2000  
#1375 – passed September 16, 2002